United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

B

76-1283

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1283

UNITED STATES OF AMERICA,

Appellant,

—against—

SECURITY NATIONAL BANK,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

Volume I—A. 1 to A. 734

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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D. C. Form APPEAL 75CR 654

CRIMINAL

~~PLATT, J.~~
COSTANTINO, J.

TITLE OF CASE	
THE UNITED STATES vs. PATRICK J. CLIFFORD, X DAVID J. DOWD, X FRANK B. POWELL, and the X SECURITY NATIONAL BANK	For U. S Katzberg deft POWELL: Joseph W.Ryan,Jr. 114 Old County Rd Mineola, N.Y. 516-248-6461 DAVID DOWD: Irving Cohn For Defendant: 278 Old Country Rd Mineola, NY 516-248-482 Security National Bank John W.Castles III Lord, Day & Lord,Esq. 25 Broadway, NYC.10004 344-8480

Did unlawfully combine to make contributions in connection with various federal, state & local campaign and elections, etc.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED — DATE	NAME	RECEIVED		DISBURSED	
Fine,			6/7/76	Govts Notice of Appeal				
Clerk,								
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
9-5-75	Before PLATT, J - Indictment filed.
9-19-75	Notice of Appearance filed as to deft Security National Bank.
/19/75	Before COSTANTINO,J.- Case called- Defts and attys present- Defts (all) arraigned and each enters a plea of not guilty-All motions by 12/5/75 and c case adjd to 12/5/75 for status report
9-19-75	Notice of Appearance filed.(POWELL)
9/30/75	75 M 1627 is inserted in CR file.
10/16/75	Notice of readiness for trial filed
10-22-75	Notice of Appearance filed (DAVID J. DOWD.
2/5/75	Before COSTANTINO,J.- Case called- adjd to 3/1/76 for trial
1/21/76	Notice of motion and memorandum of law for severance,dismissal, etc. filed r(POWELL)

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
1/26/76	Notice of motion to dismiss and memorandum of law filed(DOWD)		
1/27/76	Notice of motion to dismiss and memorandum of law filed-ret.2/19/76(CLIFFO		
1-29-76	Memorandum of Law filed in support of deft Clifford's pre-trial motions., and letter from counsel Joseph Ryan, Jr. dated Jan 21, 1976 indicating error in memorandum etc. re deft P ell's motion for severance, etc.		
1/30/76	Letter from Joseph Ryan dated 1/7/76 filed		
2/11/76	Bill of particulars filed		
2/17/76	Notice of motion to dismiss, for bill of particulars etc. filed and memorandum of law filed (CLIFFORD)		
2-18-76	Memorandum of the U.S. in response to various substantive and procedural motions filed by the defts.		
2-18-76	Letter dated 2-17-76 filed from Irving Cohen, Esq. counsel for deft David Dowd. (received from Chambers and retd as directed)		
2/19/76	Before COSTANTINO,J.- Case called-defts not present-counsel present-deft Clifford's motion to dismiss counts 9,11,13,15,- motion argued decision reserved- deft Security National Bank's motion to dismiss motion argued- decision reserved-deft Dowd and Powell's motion to dismiss argued- decision reserved- case adjd to 3/3/76 for trial		
2/26/76	Reply memo in support of deft Clifford's pretrial motions and reply brief filed		
3/3/76	By COSTANTINO,J.- Memorandum and Order filed denying motions to dismiss, to strike "surplusage" and to sever		
3-3-76	Before COSTANTINO, J. - Case called. Defts & counsel present. All defts' motions to dismiss count 15 argued. Motion denied. All defts' motion to accept a plea of nolo contendre as to deft Security National Bank argued. Motion denied. Deft Security National Bank's motion to sever argued. Motion denied. All defts' motion to dismiss argued. Motion denied. TRIAL ORDERED AND BEGUN. Selection of jury begun. Trial to continue on 3-4-76.		
3-4-76	Before COSTANTINO, J. - Case called. Defts & counsel present. Trial resumed. All defts' motion for a mistrial argued. Motion denied. All defts' motion for a continuance of 30 days argued. Motion denied. Trial to continue on 3-5-76 at 10 A.M.		
3/8/76	Affidavit of David Dowd filed		
3-8-76	~~Before COSTANTINO J case called defts & counsel present~~		
3-5-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Selection of Jury contd - all defts renew their motions for		

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DATE	PROCEEDINGS
	a mistrial and for a continuance of a month - motions argued and motions denied - trial contd on 3-8-76 at 11:30 am.
3-8-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - selection of Jurors contd - all defts renew motion to dismiss - motion argued and denied - Jurors selected and sworn - Trial contd on 3-9-76.
3-9-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - defts motions to dismiss /6 . Decision reserved - defts renew motions for mistrial - motion denied - Govt opens - defts open - Trial contd to 3-10-76.
3-10-76	Before COSTANTINO J - case called - defts & counsels present - Trial contd - Trial contd to March 11, 1976
3-11-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - motion to dismiss argued and denied - Trial contd to 3-15-76
3-15-76	BEFORE COSTANTINO J - case called - defts & attys present - Trial resumed - Trial contd to 3-16-76.
3/16/76	Voucher for expert services filed
3/16/76	Before COSTANTINO,J.- Case called- defts and counsel present- trial resumed-trial contd to 3/17/76
3-17-76	Before COSTANTINO J - case called - defts & counsels present - trial resumed - Deft Powell's motion for severance - motion argued and denied - all defts move for mistrial - motion argued and denied -Defts Powell, Dowd & Security Nat.Bank move for severance - motion denied - trial contd to 3-18-76 at 10:30 am.
3-18-76	Affidavit of EUGENE BANNIGAN, Esq. and Memorandum of deft Security National Bank filed in support of motion to dismiss count 16 of the indictment (received from Chambers)
3-18-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to March 19, 1976.
3-22-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - All defts move for a mistrial - motion argued and denied - Trial contd to 3-23-76.
3-23-76	Voucher for Expert Services filed
3/23/76	Before COSTANTINO,J.- Case called- defts and counsel present-trial resumed--trial contd to 3/24/76
3-24-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - trial contd to 3-25-76.

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DATE	PROCEEDINGS
3-25-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to 3-29-76
3-29-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to 3-30-76.
3-30-76	Stenographer's transcript dtd 3-3-76 filed.
3-30-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to 3-31-76.
4-1-76	Before COSTANTINO J - case called - defts & attys present - trail resumed - trialcontd to 4-5-76 at 10:00 am.
4-5-76	Voucher for Expert Services filed (DOWD)
4-5-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - hearing ordered and begun on question of waiver of attyetc. hearing concluded - decision reservied; Deft Security Nat'l bank and deft Powells motion for severance is denied - trial contd to 4-6-76.
4-5-76	By COSTANTINO J - Order filed the court amends its original memorandum decision read into the record this date to the following extent. Assuming Arguendo that the communications sought to be introduced were at one time privileged, under all the facts and circumstances present the privilege was waived. So Ordered.
4-5-76	Govts Memorandum of Law filed; Memorandum on attorney-client privilege filed (both received from Chambers & retd as directed)
4-6-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - trial contd to 4-7-76
4-7-76	Memorandum of Security National Bank/in support of its motion asserting the attorney-client privilege with respect to the testimony of Mr.George Degenaro (retd to Chambers as directed) filed
4-7-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to 4-8-76 at 10:30 am
4-8-76	Voucher for expert services filed (David Dowd)
4/8/76	Before COSTANTINO,J.- Case called- defts and counsel present- trial resume trial contd to 4/12/76
4-13-76	Before COSTANTINO J - case called - defts & counsels present - trial resumed - Trial contd to 4-14-76
4-14-76	Voucher for expert services filed
4/14/76	Before COSTANTINO,J.- Case called- defts and counsel present- trial resume trial contd to 4/19/76
4-19-76	Voucher for expert services filed.
6-3-76	~~Deft Clifford's reply Memorandum of law filed in support of his motion for Judgment of acquittal.~~

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DATE	PROCEEDINGS
4/20/76	Before COSTANTINO,J.- Case called- defts and counsel present-trial resumed-trial contd to 4/21/76 at 10:00 A.M.
4/21/76	Before COSTANTINO,J.- Case called- defts and counsel present- trial resumed-trial contd to 4/22/76
4/22/76	Before COSTANTINO,J.- Case called- deft and counsel present- trial resumed trial contd to 4/23/76 at 12:00 P.M.
4-23-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Trial contd to 4-26-76 at 11:00 am.
4-26-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - deft Powell rests - Trial contd to 4-28-76.
4-28-76	Before COSTANTINO J - case called - defts & atty present - trial resumed - Security National Bank rests - defts rest - all motions reserved until completion of rebuttal case - Govt rests - both sides rest - trial contd to May 3, 1976.
4-29-76	Voucher for Expert Services filed (Dowd)
5-3-76	Before COSTANTINO J - case called - defts & attys present - trial resumed and contd to May 4, 1976.
5-5-76	Surreply Memorandum of deft Security National Bank filed in support of its motion to dismiss count 16 of the indictment.
5-4-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - portion of Grand Jury minutes marked as Court Ex.#5 each defts renews its motion to dismiss -motions denied - and decision reserved as indicated - trial contd to 5-10-76.
5/5/76	Memorandum in support of motion to qualify William Holloran as an expert witness(Security National Bank)
5/5/76	Trial memorandum in support of motion to exclude certain rebuttal testimony(CLIFFORD)
5-6-76	By COSTANTINO J - Order filed re Court of appeals denied review by way of mandamus of this court's decision not to charge the lesser included offenses. The court of appeals decision is entirely consonant with the court's first impression of his issue. After careful review and complete argument, this court determines that it would be inappropriate to so charge. Accordingly, this court adheres to its original decision.
5-10-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - trial contd to May 11, 1976
5/12/76	Voucher for expert services filed(court reporter)(Dowd)
5/12/76	Certified copy of judgment received from court of appeals and filed

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DATE	PROCEEDINGS
	denying petition for writ of mandamus
5-11-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - trial contd to May 12, 1976
5-12-76	Before COSTANTINO J - case called - defts & attys present - trial resumed - Orders of sustenance, lodging and transportation signed - trial contd to May 13, 1976.
5-12-76	By COSTANTINO J - Three orders of sustenance filed.
5-13-76	Before COSTANTINO J - case called - defts & counsels present -trial resumed - Jurors deliberate at 10:am - Jury returns at 3:10 PM and renders a verdict of guilty on count 13 as to deft CLIFFORD all other defts not guilty - jury polled -and discharged - motion to set aside verdict -decision reserved - sentence adjd without date as to deft CLIFFORD.
5-13-76	By COSTANTINO J - Judgment of acquittal filed as to defts DOWD, POWELL & SECURITY NATIONAL BANK.
5-13-76	By COSTANTINO J - 2orders of sustenance filed (Lunch & coffee)
5-17-76	5 volumes of transcripts filed (dated Mar. 29, Mar. 30, April 1, April 8 and April 14,1976 respectively)
5-20-76	Deft CLIFFORD'S Memorandum of Law filed in support of his motion for a Judgment of Acquittal (recvd from Chambers and returned)
5-20-76	Vocher for expert services filed (J.Barbella - trial transcript)
5-20-76	8 volumes of stenographers transcripts filed (dated Mar. 8,Mar. 10, Mar. 11 and Mar. 16, 1976; One dated April 6, April 7, April 12 & Apr.13,1
5-21-76	Eight (8) stenographers transcript filed (one dated April 5, April 21, April 22 and April 23, 1976; May 10, May 11, May 12, May 13, 1976)
5/24/76	Stenographers Transcripts dated MARCH 15,22,23,24,25, APRIL 19, 26, 28 and MAY 12 1976 filed
5-24-76	Two stenographers transcript filed both dated Mar. 4, 1976
5/28/76	Stenographers Transcripts dated MARCH 5,17,18 MAY 3,4, and 5 1976
5/28/76	Govt's memorandum of law in opposition to deft Clifford's motion for judgm of acquittal filed
6-3-76	Defts/Memorandum of Law filed in support of his motion for Judgment of Acquittal(CLIFFORD) Reply Govt's
6/7/76	Notice of appeal filed(Security National Bank) against
6/7/76	Docket entries and duplicate of notice of appeal mailed to court of appeals
6-9-76	Govts Amended Notice of appeal filed. (Security National Bank)
6-21-76	Stenographers transcript dated Mar. 4, 1976 filed.
6-25-76	Record on appeal certified and handed to Robert Spatt for delivery to the court of appeals.

A TRUE COPY ATTEST
DATED 8/4 1976
LEWIS ORGEL CLERK
BY DEPUTY CLERK

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CRIMINAL DOCKET

DATE	PROCEEDINGS
7-2-76	Letter from John N. McBaine dtd 12-5-75 filed.
7-2-76	Letter from Robert F. Katzberg dtd 1-13-76 filed.
7-2-76	Letter from Gary P. Naftalis dtd 2-2-76 filed.
7-2-76	Letter from Edward R. Korman dtd 3-22-76 filed.
7-2-76	Memorandum on impeaching one's own witness filed.
7-2-76	Trial memorandum in support of motion to exclude testimony filed.
7-2-76	Memorandum in support of Newsday Subpoena filed.
7-2-76	Memorandum of Newsday in support of motion to quash subpoena filed.
7-2-76	Govt's request to charge filed.
7-2-76	Govt's supplemental requeststo charge filed.(three).
7-2-76	Deft Powell's request to charge filed.
7-2-76	Deft Clifford's request to charge filed.
7-2-76	Deft Security National Bank's request to charge filed.
7-2-76	Supplemental request to charge(Clifford) filed.
7-2-76	Supplemental request No. 1 (Security National Bank) filed
7-2-76	Memorandum of law concerning lesser charges filed.
7-2-76	Letter from Edward R. Korman dtd 5-3-76 filed
7-2-76	Memorandum on behalf of David Down in opposition to application of Govt to charge a misdemeanor filed.
7-2-76	Memorandum on lesser included Offenses filed.
7-2-76	Deft Clifford's memorandum in opposition to Govt's request to charge filed.
7-2-76	Letter from Gary P. Naftalis & Eugene F. Bannigan dtd 5-6-76 filed.
7-2-76	Letter from Irving A. Cohn dtd 4-29-76 filed.
7-2-76	Letter from Irving A Cohn dtd 5-1-76 filed.
7-2-76	Witness list filed.
7-2-76	Warrant returned and filed
7-6-76	Acknowledgment received from C of A for receipt of record on appeal filed.
7-6-76	Copy of order received from C of A directing that record be docketed by 7-7-76 filed(Security National Bank).
7-6-76	The above record on appeal certified and handed to Robert E. Spatt for delivery to C of A.
7-14-76	Re acknowledgment received from the court of appeals for receipt of supplemental index to record on appeal filed.
7/16/76	Before COSTANTINO, J.- Sentence adjd to 9/17/76/
7-16-76	Letter filed received from Chambers adjourning sentence as to deft Clifford from July 16 to Sept. 17, 1976 at 10:00 am.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITLD STATES OF AMERICA

- against -

PATRICK J. CLIFFORD,
DAVID J. DOWD, FRANK B. POWELL
and THE SECURITY NATIONAL BANK,

Defendants.

- - - - - - - - - - - - - - - - - - X

INDICTMENT

Cr. No. _____
(T.18, U.S.C., §§610, 371, 65[illegible]
1001 and 2)

THE GRAND JURY CHARGES:

INTRODUCTION

1. The defendant SECURITY NATIONAL BANK was at all times material hereto a national bank organized and chartered pursuant to Title 12, United States Code, Sections 21 et seq. It was, therefore, prohibited by Title 18, United States Code, Section 610, from making "a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office..."

2. The defendant PATRICK J. CLIFFORD was at all times material hereto President or Chairman of the Board of Directors of the SECURITY NATIONAL BANK and acted in those capacities.

3. The defendant DAVID J. DOWD was from February, 1966 through September, 1972, Senior Vice-President of the SECURITY NATIONAL BANK and acted in that capacity.

4. The defendant FRANK B. POWELL was from May, 1965 to April, 1971, Executive Vice-President of the SECURITY NATIONAL BANK; Vice-Chairman of the Board of Directors from April, 1971 to April, 1972; a member of the Board of Directors from approximately April, 1971 to April, 1973 and a consultant to

the Board of Directors from approximately May, 1973 through December, 1974, and acted in those capacities.

5. Joseph Stefan, was from April, 1972 through December, 1974, Executive Vice-President of the SECURITY NATIONAL BANK, and acted in that capacity.

6. Douglas Wulffleff, was from July, 1970 to March, 1973, Senior Vice-President of the SECURITY NATIONAL BANK, and acted in that capacity

COUNT ONE

1. From in or about February, 1966, and continuously thereafter up to and including December, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan and Douglas Wulffleff, each named herein as a co-conspirator, but not as a defendant, and others known and unknown to the grand jury, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree to cause the SECURITY NATIONAL BANK (hereinafter "the bank") to make contributions and expenditures in connection with various federal, state and local campaigns and elections including, but not limited to, those campaigns and elections set forth in Counts Two through Nineteen of this indictment, said contributions and expenditures totalling in excess of Two Hundred Thousand Dollars ($200,000.00), and did wilfully conspire and agree to consent to the making of such illegal contributions by the SECURITY NATIONAL BANK, in violation of Title 18, United States Code, Section 610.

2. It was part of said conspiracy that PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan, and others known and unknown to the grand jury, would select, cause to be selected or approve the selection of various officers at the SECURITY NATIONAL BANK to make political contributions of One Hundred Dollars ($100.00) a month, and would approve or cause to be approved salary

increases to reimburse and compensate said officers for the said contributions, as well as any tax liability on the salary increases.

3. It was further a part of said conspiracy that PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan and Douglas Wulffleff, other persons acting at the defendants' direction, would inform bank officers of their selection as contributors and the salary increases to reimburse them for the contributions which they were told they were to make on behalf of the SECURITY NATIONAL BANK.

4. It was further a part of said conspiracy that PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan, and others known and unknown to the grand jury, would select, cause to be selected or approve selection of political candidates or organizations as recipients of these political contributions, and would determine the amount of money to be contributed to each political candidate, campaign or political organization so selected.

5. It was further a part of said conspiracy that PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan, would conceal the existence of the said conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the said conspiracy and to effect the objects and purposes thereof, the following overt acts, among others, were committed in the Eastern District of New York.

OVERT ACTS

1. Some time after he became President of the SECURITY NATIONAL BANK in February, 1966, PATRICK J. CLIFFORD, the defendant, told various bank officials that he was initiating a new method by which the bank would make political contributions.

2. In or about October, 1967, FRANK B. POWELL, the defendant, instructed his secretary, Betty Jaeger, to keep records of a group of bank officers who would be making political contributions of One Hundred Dollars ($100.00) per month.

3. In or about November, 1967, DAVID J. DOWD, the defendant, told George Hart, a bank officer, that Hart had been selected to join a group of bank officers making political contributions; that Hart was to contribute One Hundred Dollars ($100.00) per month and would receive a salary increase of Seventeen Hundred Dollars ($1700.00) to reimburse him for the cost of the contributions, including taxes on the said increase.

4. In or about December, 1967, PATRICK J. CLIFFORD, the defendant, told James Brogan, a bank officer, that Brogan had been selected to participate in a program whereby bank officers were making political contributions of One Hundred Dollars ($100.00) per month; that Brogan would be compensated for these contributions by a Seventeen Hundred Dollar ($1700.00) salary increase, Twelve Hundred Dollars ($1200.00) for the contributions and Five Hundred Dollars ($500.00) for any tax liability on the said increase.

5. In or about December, 1967, FRANK B. POWELL, the defendant, told Jack Fretz, a bank officer, that he had been selected to make political contributions of One Hundred Dollars ($100.00) a month on behalf of the bank; that he would be reimbursed for these contributions by a Seventeen Hundred Dollar ($1700.00) salary increase, which would cover the cost to Fretz of the contributions, including taxes on the said increase.

6. In or about December, 1968, DAVID J. DOWD, the defendant, told George Brooks, a bank officer, that Brooks had been selected to join a group of bank officers making political contributions; that Brooks was to contribute One Hundred Dollars ($100.00) per month and would receive a salary increase of

Seventeen Hundred Dollars ($1700.00) to reimburse Brooks for the cost of the contributions, including tax on the said increase.

7. In or about December, 1970, FRANK B. POWELL, the defendant, told Robert Doud, a bank officer, that he would be getting a Forty-Two Hundred Dollar ($4200.00) salary increase, Twenty Five Hundred Dollars ($2500.00) of which was a merit raise, Seventeen Hundred Dollars ($1700.00) of which was to reimburse Doud for political contributions he was to make on behalf of the bank.

8. In or about December, 1970, DAVID J. DOWD, the defendant, told Thomas Casey, a bank officer, that he was going to receive a salary increase of Five Thousand Dollars ($5000.00), Three Thousand Dollars ($3000.00) of which was a merit increase, Two Thousand Dollars ($2000.00) of which was to reimburse him for political contributions he was to make on behalf of the bank.

9. In or about December, 1970, Douglas Wulffleff, named herein as a co-conspirator, but not as a defendant, told Carmine Merolla, a bank officer, that he was going to receive a Five Thousand Dollar ($5000.00) salary increase, Two Thousand Dollars ($2000.00) of which was to reimburse Merolla for contributions of One Hundred Dollars ($100.00) a month he was to make on behalf of the bank.

10. In or about February, 1971, PATRICK J. CLIFFORD, the defendant, authorized the hiring of Albert Fach at a salary of Thirty Five Thousand Dollars ($35,000.00), Two Thousand Dollars ($2000.00) of which was to reimburse Fach for political contributions he was to make on behalf of the bank.

11. In or about February, 1971, PATRICK J. CLIFFORD, the defendant, in a meeting with Edwin Langdon of the Comptroller of the Currency's Office, in the presence of DAVID J. DOWD and FRANK B. POWELL, the defendants, told Mr. Langdon, among other things, that while employees at the bank were making polit-

ical contributions, they were made from each officer's own funds on a voluntary basis, and no one was being reimbursed or compensated by the bank for such contributions.

12. In or about October, 1972, PATRICK J. CLIFFORD, the defendant, directed that bank officers making political contributions reimburse the bank for three SECURITY NATIONAL BANK expense checks in the sums of Twenty Five Hundred Dollars ($2500.00), Twenty Five Hundred Dollars ($2500.00) and One Thousand Dollars ($1000.00) which were drawn in or about October, 1972 and paid to subdivisions of the Nassau County Republican Committee.

13. In or about May, 1973, Joseph Stefan, named herein as a co-conspirator but not as a defendant, told James Ward, a bank officer, that Ward had been selected to join a group of bank officers making political contributions of One Hundred Dollars ($100.00) per month on behalf of the bank and that Ward would receive a salary increase to reimburse him for the cost of the contributions.

14 The allegations contained in Counts Two through Nineteen of this indictment are incorporated herein as Overt Acts. (Title 18, United States Code, Sections 371 and 610).

COUNT TWO

In or about October, 1972, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make a contribution and expenditure in connection with the 1972 election of the President of the United States, to wit: a contribution to the Nixon Rally. (Title 18, United States Code, Sections 610 and 2).

COUNT THREE

In or about October, 1972, within the Eastern District of New York PATRICK J. CLIFFORD and FRANK E. POWELL, the defendants, did knowingly and wilfully consent to and cause a contribution and expenditure to be made by the SECURITY NATIONAL

BANK in connection with the 1972 election of the President of the United States, to wit: a contribution to the Nixon Rally, in violation of Title 18, United States Code, Section 610. (Title 18, United States Code, Sections 610 and 2).

COUNT FOUR

In or about January, 1973, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make a contribution in connection with the 1972 election of Representatives to the United States Congress, to wit: a contribution to the Roncallo for Congress Committee. (Title 18, United States Code, Section 610).

COUNT FIVE

In or about January, 1973, within the Eastern District of New York, PATRICK J. CLIFFORD and FRANK B. POWELL, the defendants, did knowingly and wilfully consent to and cause a contribution and expenditure to be made by the SECURITY NATIONAL BANK in connection with the 1972 election of Representatives to the United States Congress, to wit: a contribution in violation of Title 18, United States Code, Section 610, to the Roncallo for Congress Committee. (Title 18, United States Code, Sections 610 and 2).

COUNT SIX

In or about April, 1974, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make a contribution and expenditure in connection with the 1974 election of Representatives to the United States Congress, to wit: a contribution to the Wydler for Congress Committee. (Title 18, United States Code, Section 610).

COUNT SEVEN

In or about April, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully consent to and cause a contribution and expenditure to be made by the SECURITY NATIONAL BANK in connection with the 1974 election of Representatives to the United States Congress, to wit: a contribution in violation of Title 18, United States Code, Section 610, to the Wydler for Congress Committeee. (Title 18, United States Code, Sections 610 and 2).

COUNT EIGHT

In or about and between September and December, 1972, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make contributions and expenditures, in violation of Title 18, United States Code, Section 610, to the Suffolk County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972. (Title 18, United States Code, Section 610).

COUNT NINE

In or about and between September and December, 1972, within the Eastern District of New York, the defendants PATRICK J. CLIFFORD and FRANK B. POWELL, did knowingly and wilfully consent to and cause contributions and expenditures to be made by the SECURITY NATIONAL BANK in violation of Title 18, United States Code, Section 610, to the Suffolk County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972. (Title 18, United States Code, Sections 610 and 2).

A 16

COUNT TEN

In or about and between March, 1973 and October, 1974, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make contributions and expenditures in violation of Title 18, United States Code, Section 610, to the Suffolk County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972 and 1974. (Title 18, United States Code, Section 610).

COUNT ELEVEN

In or about and between March, 1973 and October, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully consent to and cause contributions and expenditures to be made by the SECURITY NATIONAL BANK in violation of Title 18, United States Code, Section 610, to the Suffolk County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972 and 1974. (Title 18, United States Code, Sections 610 and 2).

COUNT TWELVE

In or about and between May, 1973 and July, 1974, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make contributions and expenditures in violation of Title 18, United States Code, Section 610, to the Nassau County Republican Committee, to be used directly or indirectly in connection with various state and local elections in 1972 and 1974. (Title 18, United States Code, Section 610).

A 17

COUNT THIRTEEN

In or about and between May, 1973 and July, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully consent to and cause contributions and expenditures to be made by the SECURITY NATIONAL BANK in violation of Title 18, United States Code, Section 610, to the Nassau County Republican Committee, to be used directly and indirectly in connection with various state and local elections in 1972 and 1974. (Title 18, United States Code, Sections 610 and 2).

COUNT FOURTEEN

In or about and between February and March, 1974, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make contributions and expenditures in connection with the 1973 New York City Mayoralty election to wit: contributions to the Beame Birthday Committee. (Title 18, United States Code, Section 610).

COUNT FIFTEEN

In or about and between February and March, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully consent to and cause contributions and expenditures to be made by the SECURITY NATIONAL BANK in connection with the 1973 New York City Mayoralty election to wit: contributions in violation of Title 18, United States Code, Section 610, to the Beame Birthday Committee. (Title 18, United States Code, Sections 610 and 2).

A 19

COUNT SIXTEEN

In or about September 9, 1972, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make a contribution and expenditure in connection with the 1972 election of Judges to the New York State Court of Appeals, to wit: a contribution to the Committee to Elect Bernard Meyer. (Title 18, United States Code, Section 610).

COUNT SEVENTEEN

On or about September 9, 1972, within the Eastern District of New York, PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, did knowingly and wilfully consent to and cause a contribution and expenditure to be made by the SECURITY NATIONAL BANK in connection with the 1972 election of Judges to the New York State Court of Appeals, to wit: a contribution in violation of Title 18, United States Code, Section 610, to the Committee to Elect Bernard Meyer. (Title 18, United States Code, Sections 610 and 2).

COUNT EIGHTEEN

In or about and between August and September, 1972, within the Eastern District of New York, the defendant SECURITY NATIONAL BANK did unlawfully make a contribution and expenditure in connection with the 1972 election of Judges to the New York State Court of Appeals, to wit: a contribution to the Committee for the Election of Sol Wachtler. (Title 18, United States Code, Section 610).

COUNT NINETEEN

In or about and between August and September, 1972, within the Eastern District of New York, PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, did knowingly and wilfully consent to and cause contributions and expenditures to be made by the SECURITY NATIONAL BANK in connection with the 1972 election of Judges to the New York State Court of Appeals, to wit: a contribution in violation of Title 18, United States Code, Section 610 to the Committee for the Election of Sol Wachtler. (Title 18, United States Code, Sections 610 and 2).

COUNT TWENTY

1. The allegations contained in paragraphs two through five of Count One of this indictment are incorporated herein.

2. In or about and between February, 1966 and December, 1974, within the Eastern District of New York, PATRICK J. CLIFFORD, DAVID J. DOWD and FRANK B. POWELL, the defendants, together with Joseph Stefan and Douglas Wulffleff, each named herein as a co-conspirator but not as a defendant, and others known and unknown to the grand jury, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree to misapply in excess of One Hundred Dollars ($100.00), which was entrusted to the custody and care of the SECURITY NATIONAL BANK, by agreeing upon, consenting to and helping to cause salary increases for certain bank officers, which salary increases, in whole or in part, were intended to reimburse said bank officers for unlawful political contributions and to reimburse said bank officers for any tax liability on the said salary increases, in violation of Title 18, United States Code, Section 656.

In furtherance of the conspiracy and to effect the objects and purposes thereof, the overt acts alleged in Count One of this indictment, among others, were committed in the Eastern District of New York. (Title 18, United States Code, Sections 371 and 656).

A 20

COUNT TWENTY-ONE

On or about February 19, 1971, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully falsify a material fact in a matter within the jurisdiction of the Office of the Comptroller of the Currency, an agency of the United States, to wit: that employees of the SECURITY NATIONAL BANK were not reimbursed by the bank for political contributions, PATRICK J. CLIFFORD, the defendant, knowing such statement to be false. (Title 18, United States Code, Section 1001).

COUNT TWENTY-TWO

On or about February 19, 1971, within the Eastern District of New York, PATRICK J. CLIFFORD, the defendant, did knowingly and wilfully falsify a material fact in a matter within the jurisdiction of the Office of the Comptroller of the Currency, an agency of the United States, to wit: that postage stamps had not been used to make political contributions by the SECURITY NATIONAL BANK, PATRICK J. CLIFFORD, the defendant, knowing such statement to be false. (Title 18, United States Code, Section 1001).

A TRUE BILL.

FOREMAN.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

A 21

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
MAY 13 1976
TIME A.M.
P.M.

THE UNITED STATES OF AMERICA

VS

DAVID J. DOWD, FRANK B. POWELL and SECURITY NATIONAL BANK

JUDGMENT OF ACQUITTAL

75 CR 654

The indictment herein having regularly come on for trial before the Honorable MARK A. COSTANTINO and a jury United States District Judge, and a verdict having been rendered finding the defendants not guilty,

IT IS ADJUDGED that the defendants are not guilty of the charge in said indictment.

DATED: Brooklyn, New York
May 13, 1976

Mark A. Costantino

UNITED STATES DISTRICT JUDGE

A 22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

THE UNITED STATES

v.

PATRICK J. CLIFFORD, DAVID J. DOWD, FRANK B. POWELL, and the SECURITY NATIONAL BANK

----------x

75-CR-654

MEMORANDUM and ORDER

MAR 31 1975

COSTANTINO, D.J.

The 22 count indictment in this case arises out of an alleged conspiracy to cause the Security National Bank to make illegal campaign contributions from 1966-1974. 18 U.S.C. §§ 610, 659, 1001.

Defendants have made various procedural motions. Since this court finds those motions to be without merit, they are denied.

Defendants have also moved for dismissal of various counts of the indictment on numerous grounds. Among the issues raised are (1) the constitutionality of § 610, (2) the applicability of § 610 to state elections, (3) the applicability of § 610 to judicial elections, (4) the applicability of § 610 to post-election contributions, and (5) the applicability of § 1001 to oral unsworn statements made to a bank examiner.

1. The Constitutionality of 18 U.S.C. § 610

Defendants argue that § 610 is an unconstitutional burden on freedom of speech in light of the recent Supreme Court opinion, Buckley v. Valeo, _____U.S._____ (#75-436, Jan. 30, 1976). In that decision, the Supreme Court held

that the expenditure provisions of portions of the Federal Election Campaign Act violated the First Amendment.

Buckley v. Valeo is distinguishable from the case at bar, however. The prohibitions of § 610 insofar as they apply in this case are specifically directed to national banks. Since Congress has chartered national banks it seems clear that Congress may exercise plenary regulatory powers over such institutions. It is concluded that § 610 insofar as it relates to contributions is a valid exercise of this power and does not infringe defendants' First Amendment rights.

Since the government has indicated at oral argument that its proof will be directed solely to the issue of contributions, this court need not decide whether the § 610 prohibition on expenditures by national banks is unconstitutional in light of Buckley v. Valeo.

Defendants have also argued that § 610 is unconstitutionally vague. The standard for determining whether a penal statute is unconstitutionally vague was enunciated in Connally v. Gen'l Construction Co., 269 U.S. U.S. 385, 391 (1925):

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. [citations omitted]

Having examined the statute in light of these standards, this court concludes that § 610 is not unconstitutionally vague.

This court has given careful consideration to defendant Dowd's argument that the question of constitutionality should be certified to the U.S. Court of Appeals for the 2d Circuit pursuant to 2 U.S.C. § 437h./[1] A review of the language of that section and its legislative history has convinced this court, however, that the provisions of the section are not applicable to the case at bar. The Joint Explanatory Statement of the Committee on Conference, for this section states:

> Conference substitute
>
> The conference substitute generally follows the House amendment and makes it

> clear that these special judicial review provisions are available only for actions directed at determining the constitutionality of provisions of the Act and of provisions of title 18, United States Code, related to the activities regulated by the Act.
>
> 1974 U.S. Code Cong. & Adm. News, p. 5644

The case at bar was not directed at determining the constitutionality of the Act. Rather this is a criminal action; the constitutional attack was raised by way of motion. There is no need for the expedited review provision of § 437(h) in a criminal action, since review may be had on appeal. Declaratory judgments regulate prospective actions; this criminal case deals with actions already taken. Accordingly there is no reason for certifying the question to the Court of Appeals.

2. The Applicability of § 610 to state elections

Defendants contend that § 610 should apply only to contributions made in connection with federal elections and not to state elections. They cite Ash v. Cort, 496 F.2d 416, rev'd on other grounds, 95 S.Ct. 2080 (1975) for the proposition that the definitions contained in 18 U.S.C. § 591

limit the scope of § 610. Ash v. Cort was a civil case dealing with corporate contributions. The prohibitions against national banks in § 610 is different from the prohibition against other corporations in the same section, and the definitions in § 591 only apply "except as otherwise specifically provided." The language of § 610 applicable to the case at bar clearly provides otherwise: "It is unlawful for any national bank . . . to make a contribution or expenditure in connection with any election to any political office . . . ." (emphasis added). This language is even more significant in light of the more limited language used in the part of the section dealing with corporations in general:

> . . . or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .

The conclusion that the part of the section relating to national banks was meant to apply to all

elections - state as well as federal - is further reinforced by reference to the legislative history. See S. Rep. No. 3056, 59 Cong. 1st Sess. p. 2:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The congress has the undoubted right thus to restrict and regulate corporations of its own creation.

3. The Applicability of § 610 to judicial elections

In arguing that § 610 should not be applied to contributions to judicial elections, defendants rely on two arguments: (1) the alleged failure in the past to prosecute for contributions to judicial elections and (2) a perceived distinction between judicial and political elections. These arguments are without merit.

Assuming arguendo that no prosecution has ever been instituted for contributions to judicial office, this court must nevertheless interpret § 610 in light of its language and purpose. Defendants' argument apparently

proceeds as follows: (1) no prosecutions have ever been instituted for judicial contributions, (2) there must have been occasions when the various United States Attorneys' offices were aware of bank contributions to judicial campaigns, (3) therefore, by failing to prosecute, the government indicated its belief that judicial campaigns were insulated from the section's prohibitions.

Only two things need be said about this argument. First, this court is not prepared to speculate as to the reasons for the absence of similar prosecutions. Second, even if this court were able to discern the interpretation of this section by various United States Attorneys in the past, that interpretation would not be binding under the circumstances present here.

Defendants rely on Rosenthal v. Harwood, 363 N.Y.S.2d 937 (1974) for the proposition that a distinction exists between political and judicial campaigns. To the extent that such a distinction is present in Rosenthal, however, it is based on the need to insulate judicial elections, more than any other election, from corruption or the appearance of corruption. The Court specifically held that "public policy . . . mandates that insofar as practicable

both selection for and performance in judicial office shall be free from political manipulation." 363 N.Y.S.2d at 943. It seems clear that this rationale requires, rather than precludes, application of § 610 to judicial elections.

In Buckley v. Valeo, supra at p. 21, the Supreme Court recognized that the primary purpose of the Federal Election Campaign Act was "to limit the actuality and appearance of corruption . . . ." These public policy considerations clearly mandate that the words of the section - "any election to any political office" - be given their plain meaning. Accordingly, it is concluded that § 610 does apply to contributions made to judicial campaigns.

4. Applicability of § 610 to post election contributions

Defendant Clifford argues that Count 15 of the indictment must be dismissed because it alleges a contribution made after the election. Defendant contends that to establish a violation of § 610 some sort of "active electioneering" must be proved, see, e.g., U.S. v. Boyle, 482 F.2d 755 (D.C. Cir. 1973), cert. denied, 414 U.S. 1076 (1973). The government has argued that the exclusion of

post-election contributions from the language of § 610 would "create a loophole so wide that it would consume the entire statute."

There appears to be merit to both propositions; the wording of the statute, at the time of the contribution was ambiguous.[2] This court must resolve the ambiguity in favor of lenity. Rewis v. U.S., 401 U.S. 808, 812 (1971); Bell v. U.S., 349 U.S. 81, 83 (1955). It is therefore concluded that to prove a violation of § 610, under the circumstances of this case, an intent to influence the election must be proved. Cf. Miller v. American Tel. & Tel. Co., 507 F.2d 759 (3d Cir. 1974); U.S. v. Lewis Food Co., 366 F.2d 710 (9th Cir. 1966).

This court, however, cannot conclude as a matter of law that the post-election contribution alleged in Count 15 was not made for the purpose of influencing the election. Resolution of that issue is within the province of a jury after hearing all the facts and circumstances surrounding the contribution. Accordingly, the motion to dismiss Count 15 is denied at this time.

5. The Applicability of 18 U.S.C. § 1001 to oral unsworn statements made to a Bank Examiner

Counts 21 and 22 of the indictment charge defendant Clifford with making false statements in a matter within the jurisdiction of the Office of the Comptroller of the Currency in violation of 18 U.S.C. § 1001. Clifford argues that § 1001 does not apply to oral unsworn statements when the defendant has not initiated the investigation, citing U.S. v. Bedore, 455 F.2d 1109 (9th Cir. 1972).

The United States Court of Appeals for the Second Circuit, however, has construed § 1001 in very broad terms. See U.S. v. McCue, 301 F.2d 452 (2d Cir. 1962); U.S. v. Adler, 380 F.2d 917 (2d Cir. 1967). In McCue a conviction under § 1001 was upheld despite the fact that the investigation was not initiated by the defendant. In Adler the court noted that the word "statement" as it appears in the statute has been interpreted to include oral statements not under oath. 380 F.2d at 922.

The "exculpatory - no" cases are not applicable to the facts of this case. Accordingly the motion to dismiss Counts 21 and 22 is denied.

6. Powell's Motion to Dismiss

Defendant Powell moves to dismiss Counts 3, 5, 9, 17 and 19 on the ground that, as a matter of law, he was not an active member of the conspiracy at the time the contributions charged in those counts were made. This motion is denied without predjuice. See Pinkerton v. U.S., 328 U.S. 640, 646 (1945). Hyde v. U.S., 225 U.S. 347, 369 (1912).

7. Clifford's Motion to dismiss because of undue delay in prosecution

This court cannot decide at this time whether or not there was prejudicial delay, for, as the brief on behalf of Mr. Clifford states, there "may well be substantial" prejudice. (emphasis added) Rather than speculate as to whether there may or may not be prejudice during trial this court denies the motion without prejudice.

****

Accordingly, defendants' motions to dismiss are denied. Defendants' motions to strike "surplusage" and to sever various counts of the indictment are also denied.

So ordered.

U. S. D. J.

FOOTNOTES

1/
2 U.S.C. § 437h provides as follows:

(a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18. The district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

2/

It is probable, although this court need not decide the issue, that by amending the last paragraph of § 610 in 1974, Congress has closed any loophole that existed.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-3028

UNITED STATES OF AMERICA,

Petitioner,

-against-

MARK A. COSTANTINO, United States District Judge,

Respondent.

PETITION AND APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Petitioner,

-against-

MARK A COSTANTINO, United States District Judge,

Respondent.

PETITION FOR A WRIT OF MANDAMUS

PRELIMINARY STATEMENT

The United States of America, at the suggestion and urging of the respondent, the Honorable Mark A. Costantino, and with the authorization of the Solicitor General of the United States, petitions for an order, pursuant to Title 28, U.S.C. §1651, directing the respondent to submit to the jury the lesser included offense encompassed within Counts one through nineteen of indictment 75 CR 654, and otherwise advising him as to the elements of the offenses contained in those counts.

STATEMENT OF FACTS

The indictment in this case (App. A, infra), which contains twenty-two counts, arises out of a conspiracy to cause The Security National Bank to make in excess of $200,000.00 in illegal campaign contributions, from 1966-1974, in violation of Title 18 U.S.C. §610. Almost all of these contributions were made by bank officers who were told that if they agreed to contribute they would receive special salary increases of $1700.00, to cover the contributions of $100.00 a month, as well as the additional tax liability that would be incurred as a result of the

increased income.

Section 610 of Title 18, to the extent here relevant, provides:

> "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with primary election or political convention or caucus held to select candidates for any political office, ***.
>
> * * *
>
> As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section ***."

The theory of the case was that the scheme described above plainly contemplated an "indirect *** gift of money" in connection with a campaign for political office. Section 610, which makes it an offense for any national bank to make such a contribution or expenditure, also provides that "every officer or director of any corporation *** who consents to any contribution or expenditure by the corporation *** in violation of this section shall be fined not more than $1,000.00 or imprisoned not more than one year, or both" and, "if the violation was wilful, shall be fined not more than $50,000.00 or imprisoned for not more than two years or both."

Since the evidence before the grand jury was more than sufficient to establish a wilful violation of Section 610, the indictment charged the three principal officers of the Security National Bank - who were the architects and executors of the illegal scheme - with wilfully conspiring to violate Section 610 (Count 1), and with a number of wilful substantive violations (Counts 3, 5, 7, 9, 11, 13, 15, 17 and 19). 1/

1/ The Security National Bank was also charged with violating Section 610 (Counts 2, 4, 6, 8, 10, 12, 14, 16 & 18). Moreover, the three additional counts of the indictment, not in issue here, charge violation of 18 U.S.C. 656 and 1001 (Counts 20-22).

After the United States rested, each of the defendants took the stand. They did not deny that various employees were told that if they agreed to make contributions, they would be compensated for it by salary increases which would cover not only the cost of the contribution but would also reimburse them for the additional tax liability they incurred as a result of such compensation. The defense which was offered was an advice of counsel defense. And that defense was related through the defendant Dowd, who allegedly spoke to the bank's counsel and who allegedly related that advice to the other defendants who claimed to have acted upon it. He testified, essentially, as follows (Tr. 3699-3701):[2/]

> "Mr. DeGennaro [the bank's counsel] said the bank cannot make political contribution.
>
> I said that seemed to fly in the face of other banks and since they were attending there must be a way the bank can buy tickets. He said he would look into it and get back to me.
>
> * * *
>
> Q Did you speak to Mr. DeGennaro again?
>
> A Yes. He called me back a few days after that and he said that he had looked into the matter and had some observations.
>
> * * *
>
> He said, the way to handle it is the way you told me the individual officers of the banks can do anything they want and the bank not only cannot buy tickets, but cannot reimburse any officers for any expenses for these dinners.
>
> He said the officers of the bank could purchase the tickets out of their own pocket and voluntarily.
>
> He said if it was strictly voluntary and no coercion, if they wanted to do it on their own, it was fine. I said we can ask the officers to substitute for the directors.
>
> I spoke to several officers and we were not paid enough to take over active rolls that the directors had and he thought about that and he said the matter of what we pay our officers is a matter for the bank to decide. The bank can pay its employees any salaries that is reasonable.
>
> I said, do you mean we can raise the salaries of the officers $100 per month to make the contributions?

2/ The excerpts of Mr. Dowd's testimony are annexed as Exhibit B, infra.

He said, you can do that as long as the money is the property of the officers.

He said you cannot take the money from the bank. If you want to give a salary increase permanently, it goes into their pocket and you can ask them to make political contributions on a voluntary basis, and they are free to do without coercion and that would be perfectly proper."

On cross-examination, he reiterated that testimony, as follows (Tr. 3950-3951):

"Q Isn't it further a fact, Mr. Dowd, that he told you that banks could not make contributions?

A Yes, sir, that's right.

Q And didn't he further tell you that banks could not reimburse their officers to make the contributions?

A He was very strong on that.

Q Didn't he tell you that?

A Yes, sir.

Q Didn't he tell you that the money had to come out of the pocket, the own pocket of the officer making the contribution?

A Yes, sir.

Q Didn't he tell you that it had to be his money?

A Yes, sir.

Q And you understood that, didn't you, sir?

A Yes, sir.

Q No question in your mind about that, was there, sir?

A No, sir.

Q Tell us the difference, sir, between the bank giving somebody a raise specifically for the purpose of making a contribution and that versus paying the person back after they make the contribution?

A The distinction Mr. De Genaro made was if you gave a fellow a raise and it was his money he could do with it as he pleased and if you asked for a contribution, that was legal.

If you simply had the bank buy the tickets it was illegal.

Q Doesn't the money that is reimbursed to the officer become part of his permanent money after he gets it?

A Yes, sir."

After this was adduced and the defendants rested, the United States asked the district court to instruct the jury, pursuant to F.R. Crim.P., Rule 31(c), 3/ that, even if they believed this testimony, the defendants could still be guilty of the misdemeanor defined by Section 610, that is, a non-wilful violation of Section 610.

Judge Costantino initially indicated (albeit tentatively) that he would grant the application. He stated on April 28, 1976 (Tr. 4590):

"THE COURT: You will have the charge on Friday morning, you will be able to go over it on the weekend.

Now I want that brief, I want that brief on the question of lesser counts, and I can tell you now so that you don't get upset or that you are in your offices with a false sense of security, as the law stands under the Federal system it appears to me that lesser counts will be charged by the Court."

In response to the claim that the defendants were somehow prejudiced by the timing of the request for the lesser included offense charge, Judge Costantino stated (Tr. 4592):

"THE COURT: Let me say that that preliminary opinion which I just rendered comes after I have considered the question of prejudice, prejudice stemming from the fact that the defendants rested." 4/

On May 3, 1976, Judge Costantino heard additional oral argument on the issue, and, although he declined to make a final determination, he again indicated that he would grant the

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3/ Rule 31(c) Provides:

The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

4/ The excerpts from the transcript of April 28, 1976, are annexed hereto as Exhibit C, infra.

application to charge the lesser included offense. This time he noted that the lesser included offense was a misdemeanor (and not simply a felony of a less serious degree) and observed (Tr. 4637): 5/

> "THE COURT: I don't see what harm it is to the defendants where you lose no rights to speak of in a misdemeanor whereas in a felony you lose all your rights."

Moreover, he continued on the issue of prejudice (Tr. 4642):

> "THE COURT: I will answer your argument on prejudice. I also thought about the prejudice of it and there isn't that much prejudice to the defendant -- not that the Government knew about it all the time because that argument I don't accept. From the point the lesser degree of the crime is a much less stigma type of a charge than the felonious type where you lose all rights, whereas in a misdemeanor you don't -- is the same as the drunkard driver -- he does everything he was doing in life, he gets a Civil Service application and he can fill it out and he can get a job. A felon cannot. On the question of prejudice, I don't accept it as an argument, whether it should be charged or not --"

Finally, near the close of the arguments, after one of the Assistant United States Attorneys asked him to consider the fact that, if he ruled against the defendants after a nine week trial, and the jury returned a verdict of guilty on the lesser included offense, they had a remedy by way of appeal, Judge Costantino responded by suggesting that if he ruled against the United States, an adequate remedy, short of a nine week retrial on the misdemeanor charge, would be available to the United States (Tr. 4640):

> "THE COURT: If I decided that it is not -- should not be included by way of a lesser included offense, I can give you leave to immediately mandamus me to the Court of Appeals before charging the jury and have 6/

5/ The excerpt from the transcript of May 3, 1976, is annexed as Exhibit D, infra.

6/ The attorney for the defendant Dowd, immediately voiced concern that anyone but Judge Costantino should rule on this issue (Tr. 4640-4641):

> "I would say this on the record, if Your Honor should decide not to grant the Government's application I don't know whether there is any requirement on Your Honor's part to have it certified to the Circuit Court. I think this is a decision Your Honor should make. I urge Your Honor to make it. We don't object, why should the Government object."

> the question certified since these are their cases, Herary, and Brewster. I am always happy for them to give me information. When they say: Judge Costantino, you better do it this way, I have no objection to it at all."

On the following morning, May 5, 1976, Judge Costantino read a seven page opinion from the bench denying the application to charge the lesser included offense. Judge Costantino correctly recognized that before a lesser included offense charge could be given, over the objection of a defendant, there must be some element which distinguishes the greater and lesser offense and as to which the evidence is disputed (Tr. 4651-4652). 7/ He observed (Tr. 4652):

> "Accordingly, this Court must examine 18 United States Code Section 610 in light of the evidence adduced at trial in order to determine the correctness of charging the lesser included offense in this case. The applicable portion of 610 is as follows: 'Every officer or director of any corporation ...who consents to any contribution...by the corporation...in violation of this section shall be fined not more than one thousand dollars or imprisoned not more than one year, or both; and if the violation was wilful shall be fined not more than fifty thousand dollars or imprisoned not more than two years, or both.'
>
> The Government's main thrust in this trial has been to prove the wilful violation of this section."

Judge Costantino continued (Tr. 4653):

> "If the jury were to believe the defendants' testimony, it would have to acquit the individual defendants of the felony. This Court must determine what effect the jury's belief in defendants' version would have on the misdemeanor violation, if charged. Although wilfulness is not an element of the misdemeanor violation, defendants can be convicted of the misdemeanor only if they knowingly cuased the bank monies to be contributed. The statute does not assess strict liability regardles of scienter. Cf. United States against Finance Committee to Re-elect the President, 507 F second 1194, 1197 (District of Columbia Circuit, 1974). If the jury believes defendants' testimony that they relied on counsel's opinion that salary raises become the property of officers and do not constitute bank money, then the jury could not convict the individual defendants of knowingly

7/ The excerpt from the transcript of May 4, 1976, is annexed as Exhibit E, infra.

causing contributions of bank money."

Accordingly, Judge Costantino concluded (Tr. 4653):

> "Therefore the proof offered in this case both by the prosecution and the defense would not permit the jury to adequately distinguish between the elements of the felony and the misdemeanor. Cf. Sansone against United States, 380 U.S. 343, 350, n. 6 (1965).

Judge Costantino also found that the defendants had been prejudiced in some unspecified way by the fact that the request for the lesser included offense came after the defendants had testified (Tr. 4654):

> "In addition, this Court previously directed that all parties submit their requests to charge by the end of the Government's case. Although the Government was aware at that time of Defendants' intention to use an advice of counsel defense, it failed to request the lesser included offense charge.
>
> To the extent that they relied on the Government's request to charge, the defendants would be extremely prejudiced if this Court were to change the lesser included offense despite the Government's failure to make a timely request."

After announcing his decision, Judge Costantino again, sua sponte, suggested a petition for a writ of mandamus (Tr. 4654):

> "This Court is aware that the nature of this decision might normally preclude the Government from securing appellate review. Accordingly, if the Government wishes to bring a mandamus application before the United States Court of Appeals for the Second Circuit, this Court will adjourn further proceedings until such time as the application can be reviewed."

And, in the colloquy which followed, Judge Costantino indicated that he "wanted" the government "to do that", and instructed the Chief Assistant United States Attorney to tell the Solicitor General that "I think it is important enough and I have no qualms either way."

Subsequently, after being advised on the same day (May 4, 1976), that the Solicitor General had authorized the petition for a writ of mandamus, he adjourned further proceedings before the jury until May 10, 1976. He began, however, to hear lengthy motions for judgments of acquittal.

No objection was voiced by any of the defendants to this procedure.

REASONS FOR GRANTING THE PETITION

The petition for a writ of mandamus is sought for two reasons, both of which are critical to the conclusion of this nine week trial. First, it is, as we shall show, clear that the United States is entitled to a charge on the lesser included offense if there is a disputed element which distinguishes the lesser and greater offense. If, as we believe, that Judge Costantino is wrong, then the conceivable result of his refusal to charge a lesser included offense may be another nine week trial, for no good reason. Since the misdemeanor involves a different offense, with different elements, neither the Double Jeopardy Clause, or the doctrine of collateral estoppel would preclude such a retrial. 8/

More significantly, the holding reflects a view of the law by Judge Costantino, which he previously expressed and presumably will charge, namely (Tr. 4626):

> "[I]f the jury finds that the moneys that were given as salary increases became the moneys of the employees, then it may go differently, whether there is a statute or no statute, because it is their money and they have a right to give it away. Now you don't have a problem under that situation of a violation of the statute because the money is theirs and anybody can do anything they want with their own money. I don't think any law in America can change that, if it is your money you may do anything you wish."

Our view is that Section 610 was intended to bar indirect payments of money by banks to political campaigns, and it is irrelevant whether, in the process of making such a payment, title to the money passes to some third person. It is equally irrelevant, contrary to Judge Costantino's ruling at issue, that the defendants were told or believed "that

8/ If a new charging instrument is required, the statute of limitations may preclude a retrial on many of the substantitve offenses.

salary increases became the property of the officers and do not constitute bank money." This is so because, contrary to Judge Costantino's conclusion, that the defendants can be convicted of violating Section 610 "only if they knowingly caused bank monies to be contributed", Secion 610 makes it an offense for a bank officer to "consent to any contribution" by the bank, a term which is definded to include any direct or indirect payment of money. There can be no doubt that the scheme admitted to by the defendants here constituted such an indirect payment of money and that the advice of counsel defense, if applicable at all, is pertinent only to the issue of wilfulness. Yet, if Judge Costantino charges the jury in the manner in which he suggests that he will, he will not only erroneously deprive the United States of its right to a charge on the lesser offense, but may very well be instructing the jury erroneously to return a verdict of acquittal on the greater as well as the lesser offense if they believe the defendants' claim that they believed the money was contributed "was the property of the officers and do not constitute the bank's money".

We recognize that although appellate review of the decision of a trial judge during the course of the trial is not novel or unheard of, [9] such review by mandamus is ordinarily not approved of by appellate courts. This is so, not because there is no jurisdiction to grant relief from interlocutory orders in criminal cases, see e.g., United States v. Carter, 493 F.2d. 704, 708 (C.A. 2, 1974); United States v. Weinstein, 511 F.2d 622 (C.A. 2, 1975), certiorari denied, sub nom; Austin v. United States, 422 U.S. 1092; or because no appeal is expressly authorized, see United States v. Weinstein, 452 F.2d 710, 712 (C.A. 2, 1972) certiorari

9/ See, e.g., 23 D.C. Code, Section 104(b).

denied, sub nom., Grunberger v. United States, 706 U.S. 916; United States v. Dooling, 406 F.2d 192, 198 (C.A. 2, 1971, certiorari denied, sub nom.; Persico v. United States, 395 U.S. 911 (1969), but because of policy concerns that, if such review by way of mandamus were readily available, trials would be frequently delayed to contest various rulings during trial.

We believe that the granting of this petition, in the peculiar circumstances here, will not create a precedent for such undesirable consequences. This application, although formally designated as a petition for a writ of mandamus, is in fact an application for advisory opinion - albeit in the context of an actual case and controversy, since it is brought at the suggestion and, indeed at the urging, of the trial judge for advice as to whether he is pursuing a correct course in relation to certain critical instructions he proposes to give the jury at the close of a nine week trial in an important case which has aroused significant public interest. Moreover, the five day delay of the trial which he authorized without any express request for it, was done without objection by the defendants. Accordingly, the issue here is not whether, in an ordinary criminal case, the United States may, over the objection of the trial judge, delay the trial to seek review of a proposed charge, but whether a trial judge, who has been severely criticized for charges he has given, [10/] and who is particularly sensitive to his obligation to see that a just judgment is rendered after a long trial in a case of major importance, may obtain guidance from this court. Rather than setting a dangerous precedent, the granting of the petition here will plainly further "the public's interest in just trials designed to end in just judgments". Wade v. Hunter, 336 U.S. 684, 689 (1949).

10/ See, e.g., United States v. Fields, 466 F.2d. 119 (C.A. 2, 1972); United States v. Clark, 475 F.2d. 220, (C.A. 2, 1973)

With this as an introduction, we proceed to a more detailed discussion of the merits of the petition. We show, first, that a district court judge has no discretion to refuse a lesser included offense charge where there is a disputed element which distinguishes the greater and lesser included offense. Second, that cases have consistently rejected the prejudice which the defendants claimed to have suffered with regard to the timing of the request for such a charge. And, finally, that Judge Costantino is plainly wrong in concluding that, on the evidence presented, there was no basis for the jury to adequately distinguish between "the element of the felony and misdemeanor"

A. THE SETTLED LAW REGARDING LESSER INCLUDED OFFENSES AND THE ABSENCE OF ANY LEGAL PREJUDICE OCCASSIONED BY THE TIMING OF THE REQUEST FOR SUCH AN INSTRUCTION.

The history, and construction placed upon F.R. Crim. P., Rule 31(c) shows that, although its language is permissive, "it appears settled that a 'lesser included offense' charge is a matter of right if the conditions set forth in the Rule are satisfied." Government of Virgin Islands v. Carmona, 422 F.2d 95, 100 (C.A. 3, 1970), and cases cited. As Professor Wright observed (Wright, Federal Practice and Procedure, §515, p.371-372):

> "Rule 31(c), permitting a jury to find a defendant guilty of a lesser offense necessarily included in the offense charged, is a restatement of prior law. This doctrine developed at common law to aid the prosecution in cases where the proof failed to show some element of the crime charged. It can be beneficial to the defendant, however, since the jury may temper justice with mercy by acquitting defendant of the offense charged and finding him guilty of the lesser offense. If the evidence is such that the jury could rationally find defendant guilty of the lesser offense but not the greater, an instruction on the lesser offense must be given. (Emphasis supplied).

See, also, Fuller v. United States, 407 F.2d 1199, 1230 (C.A.D.C., en banc, 1968), certiorari denied, 393 U.S. 1120 (1969), where the Court of Appeals observed: "In general the chargeability of lesser included offenses rests on a principle of mutuality, that if proper, a charge may be demanded by either the prosecution or defense" (emphasis added). Indeed, this is not surprising since the primary purpose of the policy "carried forward by this Rule [31(c)], was to aid the prosecution when its proof did not fully live up to expectation." (United States v. Markis, 352 F.2d 860, 866 (C.A. 2, 1965). Nor is it surprising that the early American cases preceeding the adoption of the Act of June 1, 1870, §9, 17 Stat. 198, which is carried forward in Rule 31(c), United States v. Markis, supra, 352 F.2d at 866, also provide a complete answer - as do later cases - to most of the defendants' claims below, including their claim of prejudice.

Perhaps the leading American case, prior to the Act of June 1, 1870, is the opinion ofthe New York Court of Appeals in Dedieu v. The People, 22 N.Y. 178 (1860). There Judge Denio observed that:

> "[I]t was a well established principle that where an offense was increased in grade, or as to the measure of punishment, by the existence of a particular circumstance, or a special intent on the part of the accused, and an indictment was found setting forth the circumstance or intent which rendered the act more highly criminal, if the prosecutor failed to prove that part of the case, he was still entitled to a conviction for the simple offense; and the unproved allegations were not allowed to prejudice the case proved. They were regarded as surplusage."

Moreover, Judge Denio observed that, in such a case, the variance does not as a matter of law prejudice the defendant.

> "In all these cases the indictment includes a true description of the act done, and all the circumstances defining the minor offense, and it adds to these the further circumstance, which, if proved, would raise the offense to the higher grade. Now, if the latter are not proved, there is yet no variance. As far as the proof goes, it conforms to the allegations. Simply, the whole indictment is not proved; but the principle applies, that is enough to prove so much of the indictment as shows that the defendant has committed a substantial crime therein specified."

This basic reasoning was again reaffirmed in United States v. Brewster, 506 F.2d 62 (C.A.D.C. 1974). There the Court of Appeals observed (506 F.2d at 74):

> "So far as a requirement of notice to defendant Brewster that at trial he would have to meet a [lesser inlcuded charge] ***, we observe that any trial counsel is always on notice of F.R. Crim. P. 31(c), permitting an instruction to the jury and conviction on a lesser included offense, even though not specifically charged in the indictment."

This analysis applies with even greater force here since Section 610, by its express terms, makes it an offense simply to consent to the making of an illegal contribution, the finding of wilfulness serving only as a predicate to the imposition of a greater penalty.

Moreover, in United States v. Brewster, the Court of Appeals continued:

> "We think there was no lack of notice, nor any misleading prejudice to the defendant here. It is always true that the greater offense contains an element which the lesser included offense does not; this is one of the reasons for the use of the terms "greater" and "lesser" to describe the two offenses, and why the lesser is thought to be included in the greater. It will nearly always be true that the defendant will strive mightily to disprove the extra element in the greater offense, to escape the usually greater punishment attached to the greater crime. Ordinarily, this would simply be good trial strategy.

> It is also frequently true that the defendant is successful in making a defense to the extra element necessary to prove the greater offense, in this case the criminal intent defined by 'corruptly', as the defendant did here. But it is precisely the defendant's usual trial strategy of concentrating on the additional element or elements involved in the greater offense, and the likelihood of his success in this strategy, that induces the prosecution to ask for the lesser included offense charge, as the prosecution did here. So this should constitute no surprise to the defense, nor do we think it did in the case at bar."

In his unexplicated ruling, that the defendants here were somehow prejudiced by the timing of the request to charge on the lesser inlcuded offense,[10a/] Judge Costantino ignored altogether the reasoning in United States v. Brewster, supra. Moreover, as a simple matter of reason and common sense, there is no basis for the only possible claim of prejudice that the defendants themselves suggested.

The defendants have suggested that they took the stand, and in effect admitted the lesser included offense, presumably secure in the knowledge that it would not be sufficient to convict them of the greater with which they were charged, although not one of them has stated flatly that they would not have testified in any event.

Aside from the holding in Brewster, that Rule 31(c) automatically put them on such notice, this claim simply does not hold water. First, there would be nothing to prevent the use of their testimony here, if they were acquitted of the greater offense, at a second trial, charging them with the misdemeanor which does not involve the element of wilfulness.

10a/ Until there was any evidence adduced to support the advice of defense counsel, the United States was under no obligation to request such a charge. Indeed, until such evidence is presented, such a request would not have been proper. See United States v. Harary, 457 F.2d. 471 (C.A. 2, 1972).

Second, it is inconceivable that the defendants would have risked certain conviction on the felony count by not taking the stand.

While we do not wish to burden the panel with a detailed discussion of evidence of the government's case, one particular significant piece of evidence, which had to be explained, proves the point. At one point during the conspiracy, a bank officer wrote an anonymous letter to the Comptroller of the Currency detailing the illegal scheme. At a meeting between a representative of the Comptroller of the Currency and the three individual defendants, which followed, the defendant Clifford flatly denied that raises were given to employees who agreed to make political contributions. A contemporaneous memorandum of that meeting (made long before any criminal prosecution) was admitted into evidence. (Exhibit F, infra). Unexplained, that false statement by Clifford in the presence of Dowd and Powell - without consideration of other significant facts - totally negated any defense based on the claim that the defendants believed that they were acting lawfully.

In short, the claim of prejudice, which Judge Costantino initially rejected, is simply a red herring and cannot provide any reasonable basis for refusing to charge the lesser included offense.

B. THE CLEAR BASIS FOR THE LESSER INCLUDED OFFENSE CHARGED HERE

tion 610 by its very terms eliminates the necessity, frequently posed when statutes are silent as to the specific intent required, of determining what Congress intended. See Holdridge v. United States, 282 F.2d 302, 310(C.A. 8, 1960), Blackmun, J., Here Congress has specifically indicated that a person may be convicted of the misdemeanor of consenting to, or through the operation of Section 2, of causing a national bank to make a political contribution without a showing that he acted "wilfully," that is, without a showing of a specific intent to violate the law.[11/] In Pipefitters v. United States, 407 U.S. 385, 400, n. 11. See, also, United States v. Schwartz, 464 F.2d 499, 5 511 (C.A. 2, 1972), certiorari denied, 409 U.S. 1109. All that need be shown is that they knowingly consented to the indirect paym of money by the bank to a politic campaign. Since no specific wrongful intent is required, it is plain that the advice of counsel defense is not applicable to the misdemeanor offense. As the Court of Appeals for the Fifth Circuit observed in United States v. Bristol 473 F.2d 439, 443 (C.A. 5, 1973):

> "In conjunction with Bristol's main attack on the portion of the charge to the jury dealing with general criminal intent, he asserts two collateral arguments. The first is that his good faith belief that he was not violating the law (a belief that was allegedly reinforced by some advice of counsel) should be a defense to the charge. Even if his attorney had given advice after learning all the relevant facts, which the record indicates was not the case, Bristol's reliance thereon and good faith belief in his innocence would be no defense to a malum prohibitum crime that does not require a specific

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11/ Judge LaBuy, in his book on Jury Instructions In Federal Criminal Cases defines wilfully as follows (p. 23):

> "The word 'wilfully' as used in the crime charged means that the act (or omission) was committed (or omitted) by defendant voluntarily, with knowledge that it was prohibited by law, and with the purpose of violating the law, and not by mistake, accident or in good faith."

intent. See Shushan v. United States, 5 Cir. 1941, 117 F.2d 110, cert. denied, 313 U.S. 574. See also United States v. Wood, 9 Cir. 1971, 446 F.2d 506; United States v. Custer Channel Wing Corp., 4 Cir. 1967, 376 F.2d 675, cert. denied, 389 U.S. 850. United States v. Hill, D.Conn. 1969, 298 F.Supp. 1221; Note, Reliance on Advice of Counsel, 70 Yale L.J. 978 (1961)."

Accord: United States v. Hill, 298 F.Supp. 1221 (D. Conn. 1969), where Judge Claire observed: "[W]hile reliance on an opinion of counsel may constitute a defense, where the crime requires specific intent, it does not if only knowledge of the facts is required" (298 F. Supp. 1221).

On the other hand, in order to convict the defendant of the felony of "wilfully" consenting to or causing the bank to make an indirect political contribution, a specific intent must be shown, and an advice of counsel defense might avail the defendants. Plainly, therefore, there is a disputed element here which distinguishes the lesser and greater offense. United States v. Harary, 457 F.2d 471 (C.A. 2, 1972).

The district court, however, held that in order to convict on either the greater or lesser included offense, it would have to be shown that the defendants knowingly caused bank moneys to be contributed" and that, if the "jury believes defendants' testimony that they relied on counsel's opinion that salary raises became the property of officers and do not constitute bank money," then the jury would have to acquit on both the greater and lesser offense. Therefore, he concluded "the proof offered in this case both by the prosecution and the defense would not permit to adequately distinguish between the elements of the felony and the misdemeanor."

This conclusion betrays a plain misapprehension of the basic elements of the offense; for if the defendants' consented to what in law constituted an indirect payment to a political campaign, it hardly matters whether somewhere in the process title to the money passed to a third person.

Indeed, the legislative history of Section 610 shows, beyond peradventure, that Congress intended that Section 610 apply where conduct through whom the indirect contribution is made, actually makes the contribution with funds that are his. The following colloquy from the Congressional debates is particularly instructive (117 Cong. Rec. 43381):

> "Mr. HAYS. I have one other question. As to corporations, would the gentleman's amendment prohibit voluntary contributions by members of corporations if they were reimbursed sub rosa? Does the gentleman understand? In other words, we will say that John Doe is vice prexident of X corporation, and that he gave $500 to a fund, and the corporation then reimbursed him, say, with some kind of cover saying it was expenses or something. That would be prohibited if it were found out?
>
> Mr. HANSEN of Idaho. That in my judgment would constitute a violation of law; in fact, violation of law as it exists now, as an indirect payment."

Obviously in such a case, as is very likely in the present case, the bank's money never directly reached a political campaign treasury. And, the monies actually contributed, were those of the employee. Yet that is the very essence of an "indirect" payment which Section 610 proscribes.

Accordingly, even if the defendants believe that monies contributed here were employees money, it would be no defense to a charge of violating Section 610, and this is so with respect to both the greater and lesser included offense. The advice of counsel defense, to felony charge, is that the defendants - acting on the advice of counsel - were told that the scheme which they knowingly designed and executed did not violate Section 610; that defense is not applicable to the misdemeanor where no showing of wilfulness is required.

CONCLUSION

Accordingly, it is plain that Judge Costantino has plainly misapprehended the basic elements of Section 610 and is not only depriving the United States of a charge on the lesser included offense, to which it is entitled as a matter of right, but intends to give an erroneous instruction which could result in an erroneous acquittal on even the greater offense. This is clearly a case like United States v. Dooling, supra, where this Court found that its "responsibility for preventing gross disruption in the administration of criminal justice," required it to invoke its "supervisory power over the district courts", and direct a district court judge not to dismiss an indictment after a jury returned a guilty verdict. Similar action is required here, for the reasons we have outlined.

Dated: May 5, 1976.

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York.

EDWARD R. KORMAN
Chief Assistant United States Attorney
(Of Counsel).

76-3028
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

United States of America,
Petitioner,
v.

Honorable Mark A. Costantino, United States District Judge for the Southern District of New York,
Respondent.

United States of America,
Plaintiff
v
Patrick J. Clifford, et.al.,
Defendants.

A petition for a writ of mandamus having been filed,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is

denied

Further ordered that the clerk shall serve a copy of this order on the judge named respondent and on all other parties to the action in the trial court.

Although at first blush it would appear that it would not be inappropriate for the District Judge to give the charge requested by the Government, mandamus is not an appropriate procedure in this case.

Irving R. Kaufman
HON. IRVING R. KAUFMAN, Chief Judge

William H. Mulligan
HON. WILLIAM H. MULLIGAN, Circuit Judge.

Edmund L. Palmieri
HON. EDMUND L. PALMIERI, District Judge, sitting by designation.

May 6, 1976

A 58

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 6 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE UNITED STATES

v.

PATRICK J. CLIFFORD, DAVID J. DOWD, FRANK B. POWELL and SECURITY NATIONAL BANK,

Defendants.

----------x

75-CR-654

M'FILMED

ORDER

M'FILMED
MAY 6 1976

COSTANTINO, D.J.

The Court of Appeals denied review by way of mandamus of this court's decision not to charge the lesser included offenses. The court indicated in dicta, however, that "at first blush it would appear that it would not be inappropriate" to so charge. The Court of Appeals decision is entirely consonant with this court's first impression of this issue. After careful review and complete argument, however, this court determined that it would be inappropriate to so charge. Accordingly, this court adheres to its original decision.

U. S. D. J.

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In case you think it's a new system, the defense can open or reserve to open at another time. That's what he is doing.

MR. KATZBERG: The Government calls John Fretz as its first witness.

J O H N R. F R E T Z, called as a witness, being duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Fretz, in a loud and clear voice --

THE COURT: Before you start your questioning, I would like to tell the jury something.

There are going to be many witnesses. And when you are ready to deliberate, the Court will submit to you a list of each and every witness that has testified during this trial and for whom they have testified, whether it be for the Government or for one of the defendants. So you need not become alarmed about it.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Fretz, in a loud, clear voice, could you give us your present occupation, please?

A I am a Vice President with the Chemical Bank.

Q For how long a period of time have you worked for

the Chemical Bank?

A Since January, 1975.

Q Prior to that time, by whom were you employed?

A Security National Bank.

Q When did you begin working at the Security National Bank, Mr. Fretz?

A About 1952.

Q When did you cease becoming an employee of the Security National Bank?

A January, 1975, when it was acquired by Chemical Bank.

(Continued on next page.)

jb/ss

lpm2

Q Now, when you started in 1952 at the Security National Bank, what was your title?

A I was a mortgage clerk.

Q Thereafter, did you receive a number of promotions?

A Yes sir, I did.

Q Could you list them for us, please, chronologically?

A I became mortgage officer in 1954; a branch manager in 1955; assistant vice president in 1958; vice-president in 1964; administrative vice president in 1974; senior vice president in 1974.

Q Now, Mr. Fretz, during the period of time that you were working at the Security National Bank, did you become familiar with the various titles that an officer could have at the bank?

A Yes sir.

Q And could you briefly relate to the ladies and gentlemen of the jury in order from the lowest rung to the highest rung, what the titles an officer at the bank could have, please?

A Generally in the Security National Bank the official title starts with assistant manager, and then manager, assistant vice president, vice president,

administrative vice president, senior vice president, executive vice president, president, vice chairman, chairman of the board.

Q Now, I want to direct your attention, Mr. Fretz, to December of 1967. What was your title at that time?

A Vice president.

Q And was there someone to whom you reported at that time?

A Yes sir.

Q Who was that?

A Mr. Frank B. Powell.

Q What was Mr. Powell's title at the bank at that time?

A Executive vice president.

Q Did Mr. Powell report to anybody at that time?

A Yes sir.

Q To whom did Mr. Powell report?

A To Mr. Patrick J. Clifford.

Q What was Mr. Clifford's title?

A I believe at that time it was president of the bank.

Q Now, again referring to December of 1967, where was your office located physically?

A In Melville, Long Island.

Q Where was Mr. Powell, your superior, located at that time?

A He was located in Huntington, Long Island.

Q Was Huntington a branch or was it the main office?

A Huntington was the main office of the bank.

Q Now, again referring to December of 1967, did there come a time when you had a conversation with Mr. Powell on the subject of political contributions?

A Yes sir.

Q Where did this conversation take place?

A At my office in Melville.

Q Was anybody else present other than yourself and Mr. Powell during the course of this conversation?

A No sir.

Q Now, who initiated this conversation?

A Mr. Powell came to see me.

Q Now, will you please tell the ladies and gentlemen of the jury what Mr. Powell told you at this time?

MR. NAFTALIS: I take it, that since Mr. Clifford and Mr. Dowd are not there, this is only being taken subject against them.

THE COURT: Subject to connection. In any event, whatever the testimony is at this time is not

binding on the other two defendants.

MR. BANNIGAN: And the bank, your Honor.

THE COURT: And the bank. Yes. Subject to connection.

MR. PATTISON: May we be heard on that point, please.

(The following took place at the side bar.)

MR. PATTISON: Your Honor --

THE COURT: What is your argument? That he is president of the bank?

MR. PATTISON: Yes. We have -- and, of course, the fact that it would not bind as of now Dowd, but the --

THE COURT: Yes, subject to connection.

MR. PATTISON: But the bank itself, I believe it would bind if it is later shown that this was done in the course of his work for and with the --

THE COURT: That's exactly what I am thinking about. If it is never shown that it was in the course of the banking business, you can't -- it can't bind him.

MR. BANNIGAN: No.

MR. PATTISON: The Court said, it does not bind the bank.

THE COURT: It is subject to connection.

MR. PATTISON: Okay.

MR. BANNIGAN: Your Honor, my objection is two-fold. One, I am not named in the conspiracy count in the declaration by name, conspirator, co-conspirator, It does not bind the bank in that --

THE COURT: YOu don't have to be named.

MR. BANNIGAN: And two, on the question of employment in binding the bank, you will recall, your Honor, the first time I ever appeared in this Courtroom was on Monday -- two Mondays ago, and I requested from the Government the names of the people they would contend bound the bank at the time of their testimony in the grand jury. And at the time of their working for the bank --

MR. PATTISON: That's correct.

MR. BANNIGAN: And Mr. Korman came down and said that he didn't know if there was anybody that fell in that category, but maybe there was one person. Shortly after that, your Honor, Mr. Katzberg turned over to me --

THE COURT: The list.

MR. BANNIGAN: Oh, no. A copy of one person's grand jury, and he told me that that person would bind

the bank. That was Mr. Shea.

On that representation, your Honor, I submit that the Government may not now contend that anybody other than Mr. Shea binds the bank. That was a representation they made, your Honor, before you pursuant to a request under Rule 16 to the material that I was entitled to.

MR. PATTISON: As to the grand jury statements, under the rule. Mr. Powell didn't testify in the grand jury.

THE COURT: In the grand jury.

MR. BANNIGAN: This gentleman testified in the grand jury. It is he who testified, not Mr. Powell.

MR. PATTISON: Mr. Powell's statements are the ones that bind the bank, not Mr. Fretz. We aren't claiming that Mr. Fretz --

THE COURT: He couldn't bind the bank.

MR. BANNIGAN: Powell could only bind the bank on the conspiracy theory. And I am not named in the conspiracy count.

THE COURT: You need not be named.

MR. PATTISON: No. Under the substantive counts.

THE COURT: Under the substantive counts. You

need not be named in the conspiracy count.

MR. PATTISON: The bank can only act through its officers.

MR. BANNIGAN: I want an instruction to the jury that nothing that this witness did or said binds the bank.

THE COURT: Except in response to Mr. Powell if it should be connected.

MR. BANNIGAN: Nothing that this witness or any other witness says can bind the bank, but only what other people -- that is, Powell, Clifford or Dowd, in their capacity --

THE COURT: Yes. Okay. I understand.

(End of side bar.)

THE COURT: All right. I just want to make a clarification of the ruling that the Court has just made. I told you the testimony of the witness or anything he says as to whom he may have spoken with Mr. Powell or anyone else does not bind the bank. However, the responses by Mr. Powell, if they are connected eventually, would bind the bank. But that is subject to connection in the future.

MR. NAFTALIS: I take it, it's true as to Mr. Clifford. It is not binding to him.

THE COURT: It is true as to Mr. Clifford and it is true as to Mr. Dowd. That is the special rule.

MR. KATZBERG: May I continue, your Honor?

THE COURT: Yes.

MR. KATZBERG: Thank you.

BY MR. KATZBERG:

Q Mr. Fretz, before the side bar, you were referring to a conversation you had with Mr. Powell in December of 1967. Do you remember that, sir?

A Yes.

Q You indicated that that took place in your office in Melville; is that correct?

A That's correct.

Q Now, what was said during this conversation, sir?

A Mr. Powell indicated to me that the management of the bank had a problem with respect to its growth and relationship to political contributions; that in the past year since Mr. Clifford had come with the bank it had been growing very, very rapidly and wished to continue that growth. Part of that growth was its deposit structure. And part of the deposit structure is the municipal or public deposits [illegible] attendance at political functions and contributions.

THE COURT: Excuse me one moment. I think we must identify who's making the statement, whether it's what he believes he said or whether or not it's a statement made by Mr. Powell.

MR. KATZBERG: Fine.

Q Is that what Mr. Powell told you?

THE COURT: Or otherwise it's just a monologue and doesn't mean anything.

MR. KATZBERG: Fine, your Honor.

Q Is this what Powell told you?

A Yes.

Q Will you continue telling us what he said during the course of the conversation, what Mr. Powell told you?

A He indicated to me that the corporation could not make political contributions, but that individuals could. And in the past when the bank was smaller, the directors of the bank and various senior officers had made political contributions out of their personal funds. And now the bank had grown to a size where they could no longer meet the demands or requests from their personal funds.

Q What else if anything did Mr. Powell say about what was going to take place now?

A He indicated that certain -- I believe he used

the term, key members of the management team were going to be asked to make individual contributions.

Q Did he indicate how much money?

A He indicated that it would be $100 a month, $1,200 a year, and that I would be given a salary increment of $1,700, of which $1,200 would be contributed, the other $500 would cover the income tax liability.

Q Now, as a result of receiving the $1,700 salary increase, how much would these contributions actually cost you?

A Supposedly cost me nothing out of my pocket.

Q Now, did Mr. Powell say anything about merit raises -- withdrawn.

MR. BANNIGAN: Objection to leading.

MR. RYAN: I object to the leading.

THE COURT: Yes. The question is leading.

MR. KATZBERG: I just withdrew the question, your Honor.

THE COURT: All right.

Q To your knowledge, did this $1,700 salary increase have anything to do with merit?

MR. BANNIGAN: Objection. Leading. He can ask him what was said.

MR. PATTISON: Your Honor, I object. It is not

leading.

THE COURT: I will allow --

MR. NAFTALIS: It goes to the state of his mind. I think he is entitled to elicit from this witness that. We have no objection to him bringing out for the attention of this jury what Mr. Powell said and what this gentleman said. But to ask him to draw conclusions or opinions and the like is impermissible.

THE COURT: All right, go ahead. He may answer it.

MR. KATZBERG: Can the question be read back so he can answer it.

THE COURT: Yes.

(Record read.)

THE WITNESS: It was not identified as such.

Q Now, was anything said about the manner in which you would actually make these contributions?

MR. BANNIGAN: Objection. Leading.

THE COURT: Yes, that would be leading.

Q What if anything else did Mr. Powell say at that time?

A He indicated that there was some peripheral benefit to this salary increment in that two -- at least two of the fringe benefits that the bank provided, life insurance

and profit sharing, were based on an individual's gross salary -- proportionate gross salary for the whole and although it wasn't quantifiable that this increase in gross salary might provide such a benefit.

Q Did Mr. Powell say anything at this time during the course of this conversation with respect to the making of this contribution?

A Well, he indicated to me that the contribution would be $100 a month. He did not at that point indicate the method. He indicated that -- or suggested that I think this over and not discuss it with my associates, but think it over and decide whether or not I wanted to participate.

(Continued next page.)

Q And did you think it over?

A Yes, I did.

Q And did you discuss it with anyone?

A Only at home.

Q With whom, sir?

A With my wife.

Q Now, after speaking to your wife about this at home, did there come a time when you once again spoke to Mr. Powell?

A Yes, sir.

Q Approximately when was that, sir?

A I would judge it's approximately a week later.

Q Would that still be in December or would this be in January of 1968?

A I believe it was still in December. Very close to the end.

Q Of '67, sir?

A Yes, sir.

Q Where did this secret conversation take place?

A To the best of my recollection, I believe I telephoned Mr. Powell and indicated that I would participate in this program.

Q What did he say to that?

A I do not recall his response exactly.

Q So you agreed to contribute; is that correct?

A Yes, I did.

Q Mr. Fretz, did you have any choice in this matter?

MR. BANNIGAN: Objection.

MR. RYAN: Objection, your Honor.

THE COURT: Sustained.

MR. KATZBERG: Your Honor, Mr. Ryan in his opening --

MR. BANNIGAN: Objection.

MR. KATZBERG: May we approach the bench?

THE COURT: I'm going to sustain it. It wouldn't make any difference what you say to me over there. You better rephrase the question.

Q Now, did there come a time after you told Mr. Powell you would participate, sir, that you received the $1700 raise he had promised you?

A Yes, sir.

Q Approximately when did you receive that $1700 raise?

A I believe it was the following month, January 1968.

Q Mr. Fretz, I want to show you what has already been marked as Government Exhibit 18 for identification. I

want you to look at this, sir. Exhibit 18 for identification. And tell us whether or not you recognize on there the $1700 salary increase that you received at that time?

A Yes, sir.

Q What is the date of that increase?

A January 8, 1968.

Q And the amount, sir?

A $1700.

Q Now, referring still to Exhibit 18, do you recognize the information contained on that document, sir?

A Yes, sir, I do.

Q And what information is reflected in Exhibit 18, sir?

MR. BANNIGAN: I object. The document is not in evidence.

THE COURT: Yes. You asked him to tell us what is on it.

MR. KATZBERG: Yes, sir.

THE COURT: Is it in evidence?

MR. KATZBERG: No. It is just for identification. Not each a specific item. Just the general nature of the item.

THE COURT: Ask him what the document is. What is the document?

THE WITNESS: It is my personnel record indicating all salary increments from September, 1958 to January, 1974.

Q Are each and every one of the items listed in there a fair and accurate depiction of all the salary increases you received at that period of time, sir?

A Yes, sir, they are.

MR. KATZBERG: At this time I offer into evidence Government Exhibit 18.

THE COURT: Any objection?

MR. BANNIGAN: None.

MR. KATZBERG: Will you mark it?

MR. NAFTALIS: I take it,at this stage this exhibit is not binding against Mr. Clifford.

THE COURT: Not at this point. No.

MR. COHN: Nor against Mr. Dowd.

THE COURT: Not at this point.

MR. COHN: Thank you.

MR. RYAN: No objection.

THE CLERK: Government Exhibit 18 received in evidence.

(Continued on next page)

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DIRECT EXAMINATION

BY MR. KATZBERG (Cont'd):

THE COURT: As what? Exhibit 1?

MR. KATZBERG: Exhibit 18, your Honor.

They were premarked.

Q So you received that special $1,700 salary increase on 1/8/68; is that right, sir?

A Yes.

Q After that, did you thereafter begin to make contributions?

A Yes, I did.

Q When you started to make these contributions, in what form did those contributions take?

A In the form of cash.

Q And how was it that you paid in cash?

A I was so instructed to pay in cash.

Q By whom?

A Mr. Powell, I believe.

Q To whom did you make these payments?

A I delivered them to Mrs. Betty Jaeger, Mr. Powell's secretary.

Q How did you deliver these payments?

A I would put them in envelopes marked with her name. On occasion sent by interoffice mail. On

occasion I would hand-deliver them if I was going to Huntington or my associates, if they were going to Huntington.

Q Would you explain to the Jury the interoffice mail system at the bank at that time?

A It was an internal message. Anything to go between departments, you could label with a person's name.

It was a regular pickup and delivery system several times a day.

Q On the occasion you utilized the interoffice mail, other than addressing it "Mrs. Jaeger," did you mark the envelopes in any way?

A I would mark them "Betty Jaeger, Personal."

Q How long did you make these payments to Mrs. Jaeger in cash?

A I think perhaps until August of '70.

Q What occurred in August of '70?

A I was advised by Mr. Joseph Dutra, at that time I believe vice-president in charge of marketing and public relations, that the method of payment would change --

MR. COHN: Objection.

Anything told him by Mr. Dutra is not binding on Mr. Dowd.

3 Fretz - direct

MR. KATZBERG: May I approach the bench?

(The following occurred at side bar.)

THE COURT: Who made the objection?

MR. RYAN: Mr. Cohn, but I join in.

MR. COHN: I object to any interrogation of a witness concerning statements made to him by anybody else not a defendant or by David Dowd, as not binding upon my client.

MR. KATZBERG: Mr. Dutra is an unindicted co-conspirator and statements made in furtherance of the conspiracy --

MR. COHN: There is no foundation showing that a conspiracy existed.

MR. PATTISON: It may be admitted, subject to connection.

THE COURT: That is the only way. You can't have everything all at one time.

MR. COHN: Then, if your Honor please, would you instruct the Jury properly?

MR. RYAN: This is March 1st, this year, just a couple of days ago. U. S. v. Glazer.

The U. S. Court of Appeals, establishing the requirement for a co-conspirator declaration --

THE COURT: Nobody says that is not the law,

but we have to start some place.

MR. BANNIGAN: I have another objection.

I ask for an instruction, your Honor, that anything Mr. Dutra says is not binding on the bank.

He went before the Grand Jury and his testimony wasn't turned over to me under Rule 16.

THE COURT: I don't think it is the proper time.

MR. KATZBERG: The defendants have the testimony.

MR. BANNIGAN: You have missed the point of this argument, since I have made it.

MR. PATTISON: We feel it is not valid -- our affixing a label on a particular document doesn't make it binding or not.

Rule 16 says you have a right to it and you have it and that's it.

MR. BANNIGAN: When you give me everybody else's Grand Jury minutes, you foreclose me.

THE COURT: Show them your conspiracy.

(The following occurred in open Court.)

MR. KATZBERG: Would you read back the last question?

5 Fretz - direct

(Record read.)

THE WITNESS: I was told the method of making these contributions would change --

MR. NAFTALIS: May we make sure the Jury understands it is Mr. Dutra telling him this?

MR. KATZBERG: I will try to develop that.

MR. NAFTALIS: You may continue. That's fine.

BY MR. KATZBERG:

Q This conversation was with Mr. Dutra; correct?

A In person or over the telephone?

A Over the telephone, I believe.

Q Did you call Mr. Dutra or did he call you?

A He called me.

Q What position did Mr. Dutra hold in the bank at the time?

A I believe he was vice-president in charge of public relations.

Q To whom did Mr. Dutra report?

MR. COHN: Objection.

THE COURT: Sustained.

Q Could you tell us what Mr. Dutra told you in that phone conversation?

A To the best of my recollection, he indicated that hereafter I would be called and asked to make out a check to certain organizations and send it in.

Q Did he indicate who would call you?

A Yes, he did.

Q Who was that, sir?

A Mr. Arthur Chadwick.

Q What was Mr. Chadwick's title at the time?

A I believe as manager, but I am not sure.

Q To whom did Mr. Chadwick report?

MR. COHN: Objection.

MR. KATZBERG: It is important that the Jury know the structure of the bank.

THE COURT: I know but we're assuming he reported to someone.

MR. KATZBERG: It is based on this witness' knowledge --

THE COURT: I will sustain the objection.

Q Did Mr. Dutra tell you anything in this telephone conversation as to why the method of contribution was changing?

A No. He referred to the formation of a unit called the Long Island Public Affairs Club of which I would then be a member and hereafter I would be asked

to make out checks payable to certain organizations.

Q Subsequent to this telephone conversation with Mr. Dutra, did you begin to make your checks payable to the individual organizations, sir?

A Yes, sir, but I didn't give personal checks.

Q What did you use, sir?

A I purchased bank money orders.

Q Tell us how that came about?

A Yes, sir.

My wife and I maintained a joint checking account with both our names appearing on checks. She strongly objected to my issuing checks to political organizations saying it implied that it supported the organization or contribution.

In deference to her wishes, I chose to buy personal money orders.

Q From the time you began to make these contributions via the method of money orders, how would you know to whom to draw your money order payable to?

A Mr. Art Chadwick would telephone me and tell me whom the payee would be.

Q How frequently did you receive a call from Mr. Chadwick?

A Once a month.

Q On these occasions, tell the Jury in substance what he would tell you?

A He would tell me he needed a check payable to X organization, could he have it in the next couple of days.

Q How did you know what amount to write?

A He would generally tell me it was $100 or if there was a delay perhaps $150 or $200.

He apparently knew if I was up to date or not.

Q Did you keep any records of these money orders that you wrote pursuant to Mr. Chadwick's instructions?

A No, sir, I did not.

Q Do you have any records reflecting those money orders today, sir?

A No, sir, I don't.

Q You told us when paying cash to Mrs. Jaeger you would transmit the cash by hand or an interoffice envelope; is that correct, sir?

A Yes.

Q How would you physically transmit the money orders to Mr. Chadwick?

A I sent them in almost all cases by interoffice

mail by messenger.

Q Would you mark the interoffice envelope in any way?

A Correction, if you will.

I would put the money order into a business size envelope and address it to "Mr. Chadwick, Personal and Confidential."

I would then put that envelope into an interoffice envelope and direct it to Art Chadwick in Huntington.

Q. You indicated that you began to make these contributions pursuant to Mr. Chadwick's instructions in August or September of 1970?

A Yes.

Q For approximately how long a period of time thereafter did you continue to write these money orders at Mr. Chadwick's suggestion?

A approximately March, 1974.

Q At any time between September '70 and March 1974, did you ever choose the organization, politician or political committee to whom you wrote those money orders yourself?

MR. BANNIGAN: Objection. Leading.

THE COURT: I will allow it.

Q Did you, sir?

A No, sir, I did not.

Q I want to get back to the time when you were giving your cash to Mrs. Jaeger.

During the time that you paid the cash to Mrs. Jaeger, where you ever told during that period of time where the money was going once you gave it to Mrs. Jaeger?

A No, sir.

Q Did you ever ask?

A No, sir.

Q Did you ever choose any of the organizations who may have potentially received that money during the period of time that Mrs. Jaeger controlled the account?

A No, sir.

MR. KATZBERG: Nothing further.

CROSS-EXAMINATION

BY MR. RYAN:

Q When you made your contribution, Mr. Fretz, you didn't intend to influence any election, did you?

A No.

Q You made them out to various organizations?

A Yes.

Q Democratic organizations?

A Yes.

Q Republican organizations?

A Yes.

Q You told us there came a time when you discussed with your wife the request to use your checking account for the purpose of contributing to this fund.

A Yes.

Q She objected to it?

A Yes, sir.

Q That was in 1970, I believe, you testified?

A Yes.

Q In '68, when Frank Powell talked to you for the first time, a week later you called Frank back and said, "I would like to participate"?

A Approximately a week.

Q You spoke to your wife during that week?

A Yes.

Q Did you tell her about your desire to participate in the plan?

A Yes.

Q Did you discuss the method of payment with her?

A No. We only discussed the idea in principle.

Q Then you made your contributions, $100 or $150, a payee check?

A Once a month, $100.

Q I think you told us Frank Powell told you make your payment in cash.

A To the best of my recollection, yes, sir.

Q Do you have some doubt about that?

A I could have. I might have had a choice of cashing a check or giving a check or cash.

Q Money order?

A Possibly so. That's quite possible.

Q Did Frank Powell tell you you had better pay in cash, this is illegal?

A No, sir. If I made out a check, I wouldn't know who tc make it out to, so it would be made out to cash.

Q You could have made it out to Betty Jaeger special?

A I could have, yes, sir.

Q Did Mr. Powell indicate toyou in any way your participation should be kept quiet because it was illegal?

A No.

Q Did he indicate to the contrary?

A No, and I didn't ask.

Q Did he tell you it was perfectly proper for

an individual to make a contribution?

A That's right.

Q How long did you work with Frank Powell at the bank?

A At that point in time, sir?

Q Sure.

A Approximately -- under his direct supervision, I would say about three years, two years, perhaps.

Q And did you have occasion to socialize with Frank?

A No, sir, not outside the bank.

I attended some banking function with him.

Q Did you ever have occasion to discuss with other people in the banking community Mr. Powell's reputation for honesty, integrity and as a law-abiding citizen?

MR. PATTISON: Objection. If he's his witness--

MR. RYAN: You can be my witness.

THE COURT: He will be his witness at this time.

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CROSS-EXAMINATION

BY MR. RYAN: (Cont'd.)

Q Did you ever have occasion to discuss Mr. Powell's reputation in the community for honesty and integrity and is a law-abiding citizen?

A Yes, sir.

Q And what was his reputation?

A Excellent.

MR. RYAN: No further questions.

THE COURT: Any other questions of this witness?

MR. BANNIGAN: Maybe, your Honor.

MR. COHN: May we have a few moments, your Honor?

THE COURT: Yes.

MR. KATZBERG: Do you want to take a recess, Judge?

THE COURT: No. I would rather finish with this witness.

(Pause)

MR. COHN: No questions of the witness, your Honor,

MR. NAFTALIS: Your Honor, I have just a few.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good afternoon, Mr. Fretz.

A Good afternoon, sir.

Q My name is Gary Naftalis and I represent Mr. Clifford.

On your direct examination, sir, you recounted certain conversations you had relating to the subject of political contributions, is that correct?

A Yes.

Q Just so it's perfectly clear, Mr. Patrick Clifford wasn't present at any of those conversations, is that correct?

A That's correct, sir.

Q And as a matter of fact you testified about no conversations you ever had with Mr. Patrick Clifford about giving political contributions, is that correct?

A That's correct, sir.

Q Now, I think you also indicated on your direct examination that there came a time when you stopped making contributions, is that correct?

A Yes, sir.

Q That was in 1974 some time?

A Correct.

Q At the time you stopped making contributions nobody took away your raise that you had gotten a few years earlier, is that correct?

A That's correct.

Q You continued to get that $1,700 raise?

A Yes, sir.

Q It was never taken away from you even though you stopped making contributions?

A Correct, sir.

Q Now, there came a time -- you were a member of something called the salary review committee?

A Yes, sir.

Q And a number of other officers were members of it, is that right?

A Yes, sir.

Q Including Mr. Clifford, is that correct?

A Correct.

Q Now, there came a time, did there not, when you would have meetings, is that right?

A Yes, sir.

Q And is it not a fact, sir, that there came a time when someone's name was proposed for a raise and Mr. Clifford said, "I don't want to give him a raise," and someone said, "Gee, he's a contributor," and

Mr. Clifford said, "I don't care about that"?

A Yes, in substance. It's my recollection he said, "I don't know anything about that."

Q But someone said an officer should get a raise and Mr. Clifford was opposed to it and someone said, "Gee, but he contributes," and Mr. Clifford said, "I don't want to hear about that --" in substance isn't that correct?

A Yes, in substance it is.

MR. BANNIGAN: The bank has no questions.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Ryan indicated when you spoke to Mr. Powell, he indicated to you that it was perfectly legal -- that Mr. Powell told you in this conversation that it was perfectly legal for an individual to make contributions, is that correct, sir?

A Yes, sir.

Q And that it wasn't perfectly legal for a bank or corporation?

A That's correct.

Q When Mr. Powell advised you to participate at this time, did he tell you, Mr. Powell -- that was legal to compensate officers for that?

A Quite honestly, Mr. Katzberg, the word legal or anything about legality wasn't mentioned at all and I didn't ask about it.

Q When Mr. Ryan asked you questions on cross-examination about your invitation and your willingness to particupate or not, did you consider it an invitation, sir?

MR. RYAN: Objection.

MR. PATTISON: That's exactly the word used and I believe the door is open.

MR. RYAN: I used the word but I object to the form of the question.

THE COURT: Well, what he considers is really an operation of his mind but I will let him answer it.

A Would you mind rephrasing it.

Q Did you consider it an invitation?

A Yes.

Q An invitation you could refuse or accept?

A The way it was presented I could refuse or accept, yes, sir.

Q And you thought if you refused there would be no repercussion?

MR. NAFTALIS: Objection. Asked and answered.

MR. BANNIGAN: Objection.

THE COURT: You have answered it.

Sustained.

BY MR. KATZBERG:

Q How did it come about that youstopped making these contributions?

MR. BANNIGAN: I object and ask to approach the bar.

THE COURT: We will take a recess now. Can you step out?

(Jury excused)

(The following occurred outside the hearing of the jury.)

MR. KATZBERG: May the witness be excused?

THE COURT: Yes, sir. The witness is excused.

(Witness exited courtroom.)

MR. BANNIGAN: The basis for my objection is very simply that in the Grand Jury, Mr. Fretz testified, I believe -- correct me if I am wrong -- that he stopped making contributions because he read an article, I believe, in Newsday, which casted some doubt on whether the contributions were legal or illegal and I submit if that's the

reason he stopped, it's inadmissible, irrelevant.

Mr. Katzberg asked him on his direct examination of this witness -- Mr. Katzberg asked when he stopped and I think he said March 1974. All Mr. Naftalis asked him was the same question.

MR. PATTISON: No, no --

MR. NAFTALIS: I know what I asked. I asked the question.

THE COURT: You are next.

MR. NAFTALIS: On direct examination Mr. Katzberg elicited from the witness during what period of time he contributed and the witness indicated he stopped some time in 1974. I simply asked the question -- I said, you pointed out in your testimony that you stopped in '74. When you stopped contributing did anyone take away your raise?

MR. PATTISON: Why and when become particularly relevant -- the circumstances of why he stopped and the feasibility of taking back that raise then --

THE COURT: The problem with that question is you are asking him to testify to the operation of mind when he read, what he read in the paper. I think it's a wrong inference to draw.

MR. PATTISON: We'll abide by the ruling but I believe the question leaves the jury with the false impression that he just stopped for no account.

THE COURT: You cannot ask the reason for stopping but you can ask him did he feel it was proper to stop at that time and the answer was yes.

MR. BANNIGAN: I would object to that.

THE COURT: Then Mr. Naftalis' question comes in.

MR. BANNIGAN: That leaves a hanging pregnant -- why he stopped is irrelevant. Whether he thought it was proper or not to stop, is not relevant. He's not on trial.

MR. PATTISON: "Did they take away your money when you stopped?"

MR. BANNIGAN: It's irrelevant.

(Recess taken)

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(Continued on next page.)

(At 3:40 p.m. the trial resumed without the presence of the jury.)

THE COURT: All right, be seated.

Do you have an application?

MR. BRANNIGAN: Just two matters, your Honor, new matter.

THE COURT: Let me hear the new matter.

MR. KATZBERG: Is this new business or old business?

MR. NAFTALIS: Your Honor, I have left the room here with the understanding that there would not be any inquiry regarding the witness' state of mind as to why --

MR. KATZBERG: We aren't going to ask any further questions.

MR. NAFTALIS: Well, as to contributions in 1964.

MR. KATZBERG: We aren't going to ask any questions.

THE COURT: You are not?

I think you are right not to.

MR. BANNIGAN: You are not going to ask any more questions, it would be improper --

THE COURT: They are finished with him.

MR. BANNIGAN: That is where we left.

THE COURT: They are finished with him, they are going to discharge him.

MR. PATTISON: Yes, Judge.

THE COURT: Do you have another witness?

MR. KATZBERG: Yes, Mr. Hart.

THE COURT: You had better put one more on. I don't want to hold the jury too long, it doesn't look too good outside.

I have been told that there are three inches of snow on Staten Island.

MR. KATZBERG: Then do I understand there is no other application?

MR. BANNIGAN: That is all, not right now, but give us a couple of minutes.

MR. KATZBERG: Judge, are there no more questions of this witness, Mr. Fretz?

Can I excuse him?

THE COURT: Yes.

MR. KATZBERG: O.K.

MR. PATTISON: Don't you have to discharge him in the presence of the jury?

THE COURT: Yes, he has to be discharged in the presence of the jury.

You can bring him into the court and then tell us there are no more questions and he can walk out, he doesn't have to be on the witness stand.

All right, bring the jury in.

(The jury then took its place in the jury box.)

(At this point, Mr. Fretz entered the courtroom.)

MR. KATZBERG: Just wait there, please.

(Mr. Fretz then waited at the side door.)

THE COURT: All right. Now, we are going to take another witness, but it is snowing rather hard outside so we will probably go a short while longer then we will probably recess.

MR. KATZBERG: At this time the Government has no further questions of Mr. Fretz, your Honor.

MR. RYAN: No further questions of Mr. Fretz.

MR. COHN: We have no further questions.

MR. BANNIGAN: We have nothing further.

MR. NAFTALIS: No further questions.

THE COURT: You are discharged and excused.

THE WITNESS: Thank you.

(The witness having been discharged then left the courtroom.)

MR. KATZBERG: The Government calls Winston Hart, your Honor.

(Continued on next page.)

WINSTON L. HART, called as a witness on behalf of the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Hart, in a loud, clear voice so that the last jurors in the jury box hear you, will you please give us your present occupation.

A Vice President of the Nassau Trust Company, Melville, Long Island.

Q And for how long have you been employed by the Nassau Trust Company?

A Since October of '74.

Q And who hired you at Nassau Trust Company?

A David Dowd was then the President of that bank.

Q Now, prior to your coming to the Nassau Trust Company, by whom were you employed, Mr. Hart?

A Security National Bank.

Q And when did you begin to work at the Security National Bank?

A March of 1966.

Q And when did you leave the Security National Bank?

A October of '74.

Q And did you work at the Security continuously from 1966 through October of '74?

A Yes, sir, I did.

Q Now, who hired you at the Security National Bank?

A Well, there were several people, there were a group of people that hired me, Mr. Clifford was one of them, Mr. Dowd, Mr. Powell and Mr. Owen was one of the group.

Q When you started to work for Security in 1966, what was your title?

A Vice President.

Q And can you briefly describe to his Honor and the ladies and gentlemen of the jury what duties you were charged with as a Vice President at Security?

A I was primarily a calling officer, calling up prospective business clients and prospective municipalities or public clients of the bank, also servicing some accounts.

Q Now, who was your superior in 1966, sir?

A In 1966 Mr. Dowd I believe was my direct superior.

Q David Dowd, sir?

A Yes, sir.

Q What was Mr. Dowd's title at that time?

A Senior Vice President.

Q Whom did Mr. Dowd report to?

MR. NAFTALIS: Your Honor, objection on the same

grounds as before. They can put in evidence the structure and the organizational chart of the bank, but to outline the scope and to go through this routine--

THE COURT: Well, this will shorten it.

MR. KATZBERG: It will shorten it this way, your Honor.

THE COURT: All right.

BY MR. KATZBERG:

Q Whom did Mr. Dowd report to?

A Mr. Clifford.

Q What was Mr. Clifford's title?

A I believe he at the time was President or Chairman, he was the Chief Executive --

MR. COHN: I move that the testimony be stricken, there has been no foundation which has been laid as to the knowledge of this witness as to who anybody was that he reported to, he is just mentioning different officers and this is --

THE COURT: Is that what he is doing, just mentioning the officers, not on his own knowledge?

MR. KATZBERG: This man worked at the bank.

THE COURT: That may be so but --

MR. KATZBERG: He has some familiarity, obviously, with who worked at the bank and whom he reported to, to

the best of his knowledge.

THE COURT: He can tell us who worked at the bank.

MR. NAFTALIS: We would be delighted to stipulate who held what title in the bank, Mr. Katzberg can draw it up as an exhibit and mark it and show it to the jury.

This seems somewhat a waste of time to go through this.

THE COURT: He can ask him the structure.

I don't think you have the right to ask who reported to whom because that is something individual to each person.

MR. KATZBERG: My question was what was Mr. Clifford's title and may he answer that, your Honor?

THE COURT: You may answer that, sure.

BY MR. KATZBERG:

Q What was Mr. Clifford's title at the bank when you first worked there?

A He was the President and Chief Executive Officer of the bank.

Q Now, you told us that you were in charge of municipal accounts; is that correct, sir?

A I didn't hear the question entirely. Was I in charge of municipal accounts?

Q Yes, sir.

A No, I was never in charge of municipal accounts, I was the calling officer on municipal accounts, I reported to Mr. Dowd in that connection, we didn't have anybody who was in charge of the accounts per se.

Q Now, what were your duties -- Withdrawn.

You told us that you had certain responsibilities with respect to these municipal accounts?

A That is correct.

Q Is that correct?

A Yes, sir.

Q Will you tell the ladies and gentlemen of the jury what a municipal account is.

A Well, that is an account of public monies. I can give you several for instances, school districts, these are usually institutions which have taxing powers. The County of Nassau would be another one. I'm trying to bring it down to specific cases. The Village of Bayville would be a municipality.

Again, to repeat, the basic or essential ingredients of a municipality generally is by definition that it has the ability to tax.

Q Now, will you tell us what a demand deposit account is?

A Yes. A demand deposit account is one on which the bank does not pay interest. It is distinguished from a time account and is a much more preferable type of account for the bank because the bank during the time it has money on those deposits --

MR. COHN: I am going to object, your Honor, he is merely being asked to say what an account is and not to characterize what the account is.

MR. KATZBERG: Your Honor, I believe he is fully explaining the way the account works to the jury and that is a part of what the jury should be learning about.

THE COURT: You opened on that, to that effect. Now, all right, go on.

BY MR. KATZBERG:

Q Now, will you continue with your answer, Mr. Hart.

A That is the chief difference and therefore a demand account per se generally becomes much more a desirable type of account to a bank than a time account such as a savings account where they pay interest to the depositor.

Q Now, during your years at Security Bank and your responsibilities with reference to these demand deposit accounts,

did you come to learn approximately how much money was contained in the accounts, in these types of accounts at the bank?

A Yes. We started to keep records, fairly accurate records of these and they became more accurate as the years went by, they were eventually put on a computer so that we could tell what the net earnings were on each of our municipal accounts, and so we did know pretty accurately what our earnings were on these public or municipal accounts.

Q Will you give us an approximate figure of how much money was on deposit in these municipality or demand accounts?

A Well, the Security National Bank in the year, well, I believe in 1971 or '72, we were the 13th or 16th largest bank in the country in the point of deposits of municipal accounts, even though we were the 44th or 45th largest bank in the country from the standpoint of total deposits.

The deposits in municipal accounts were in the hundreds of millions, both time and demand.

Q Now, was it a part of your job to inquire or help the bank acquire these kinds of accounts, these municipal and demand accounts?

A Yes, very definitely, I was the new business

officer soliciting this type of account.

Q And in this endeavor, did you discuss this matter with Mr. Dowd?

A Yes, frequently.

Q That is as to the acquisition of these accounts?

A Yes, I consulted with him.

(Continued on next page.)

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Q Did you discuss the acquisition of these accounts with Mr. Clifford?

A Almost never.

Q Now --

MR. NAFTALIS: He said "never"?

THE COURT: "Almost never."

MR. KATZBERG: He said, "almost never."

Q Now, when did your involvement begin in the actual attempt to obtain these municipal accounts?

A Well, I guess it was after I was with the bank a couple of years, I guess as it progressed --

MR. BANNIGAN: I'm going to object, he was asked a simple question, When did he begin doing something, and it seems to me he can give the date and answer the question and not embellish on it.

THE COURT: Yes.

THE WITNESS: Well, I would like to say may I [illegible] the answer with an explanation, if I may, on this [illegible].

Q First, give us the answer.

A Approximately two years after I started with the bank.

Q Would that be --

A A year and a half, two years.

Q Would that be about 1968 since you started in '66?

A Yes, I would say so, '67, '68, around there.

Q Okay.

How did you go about obtaining these municipal accounts?

A Well, we determine first what the best prospects were from the standpoint of size of deposit, and remember, these are public accounts so there are public records of the size of the deposits at the different institutions and of each municipality, and we went after those municipalities, and that is natural, and the best potential is in the size of their balances and --

Q And how did you go about doing that, what was the principal way you did that?

A Telephone calls, contact work, luncheons, dinners sometimes, appointments with the chief fiscal officers normally of these municipalities.

Q What if any role did the making of political contributions as they pertained to --

MR. NAFTALIS: Objection, your Honor.

Q What if any role was there, was there some role or no --

MR. NAFTALIS: Objection, your Honor, no

foundat...

MR. BANNIGAN: No foundation.

THE COURT: I will sustain it.

Q Was there any other basis upon which you attempted to make or to acquire these municipal accounts?

A You said was there any other basis?

Q Any other way that you tried to obtain these municipal accounts?

A Yes, we used --

MR. BANNIGAN: Objection to the question.

THE COURT: Yes.

He is asking you personally.

THE WITNESS: I personally?

MR. KATZBERG: The bank --

THE COURT: He is asking you.

THE WITNESS: The bank or I personally.

THE COURT: You speak for the bank, you were employed by the bank for this purpose?

THE WITNESS: Am I talking, am I talking on behalf of the bank now or on behalf of me?

THE COURT: You ought to know what the question is.

Q To your knowledge --

A Yes.

Q -- was there any other way in which the bank sought to obtain these municipal accounts?

MR. BANNIGAN: I object.

A Yes, sir.

MR. BANNIGAN: He can testify as to what he did, your Honor, and that is all.

MR. KATZBERG: And his knowledge.

MR. BANNIGAN: He can only testify as to what he did, he can't testify as to what others did.

THE COURT: He must testify as to what he did in obtaining these municipal accounts, that is what we are talking about.

Q What was that?

A Of course the bank did start to make political contributions, and going into that I started personally to make political contributions, and in -- I believe it was in 1967 --

Q I am not referring to your own contributions [illegible] referring to the manner in which the bank obtained municipal accounts.

First you told us that there was a good deal of contact with people who were in charge of these accounts; is that correct?

A Yes, contact work and so forth.--

MR. RYAN: I object to the form of the question.

THE COURT: No.

Go ahead.

Q Then you said that the bank also made political contributions to obtain these accounts; is that correct?

MR. NAFTALIS: Objection, your Honor, he is repeating the testimony.

Let him ask the witness questions and let the witness answer properly and let Mr. Katzberg question properly.

THE COURT: Your objection is to his reiteration of a question with an answer.

Just give him the question and then get the answer.

MR. KATZBERG: Okay.

Q Is it true, sir, that you indicated that there were two basis upon which you obtained these accounts?

MR. NAFTALIS: Your Honor, I thought you just sustained the objection to the question.

THE COURT: That sounds like a different question to me.

Go ahead.

Q Is that correct, sir?

A Yes, there were -- I think what we are getting

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at is the political contribution and of t[illegible]licitation --

Q Thank you, sir --

A -- that was very definitely the case.

Q Thank you, sir.

You indicated before that you would keep detailed records of the municipal accounts on deposit; is that correct?

A Yes, sir, we did.

Q And did you do that as a part of your function in obtaining and supervising these municip[illegible] accounts?

A Yes, that was one of my duties which I engendered myself pretty much as the years went by because I felt that the only true way we could find out which municipal accounts were earning us the most money --

MR. BANNIGAN: I object, I have to object to what he felt. What he felt is irrelevant, what he did is what is relevant here.

THE COURT: Well, I think sometimes it is interwound.

THE WITNESS: I can answer it.

MR. BANNIGAN: That is all that is being asked.

THE WITNESS: I kept records.

MR. BANNIGAN: That is all that is being asked, not what he felt.

THE COURT: I don't think you have to embellish the question, you must stay with the question asked.

MR. BANNIGAN: I am just objecting and trying to do it within the rules.

THE COURT: That is what I am here for.

MR. BANNIGAN: That is why I am making the objection.

THE COURT: Okay.

MR. KATZBERG: All right, sir.

THE COURT: Now within the rules you may answer the question.

Okay?

A I kept fairly accurate records of the earnings of each of these accounts, we came to know which accounts to keep on soliciting to get more money of and which ones we were losing money on and we naturally would by-pass those.

Q Now you kept and maintained those records, sir; is that correct?

A Yes, sir, we did. I had a girl under my supervision that did that.

Q Who else saw these records?

A Each month I sent a copy to Mr. Clifford, a copy to my immediate superior who was a different person as the years went by, and --

Q Originally who was that?

A It was Mr. Lowd, and then it became Mr. Dutra and then it became Mr. Casey and then finally Mr. Pezarro, and I sent one to the head of the Investment Department of the Security National Bank, as I believe it was called that, I forget, under John McCabe.

Q Now, Mr. Hart, with reference to those records, I would like to show you what has already been marked as Government's Exhibit 51 -- this is the same (indicating) -- 52, 53, 54, 55, 56 and 57.

I would like you to take them individually, one by one, if you would, sir?

A All right, sir.

Q Now with respect to Exhibit No. 51, can you identify what that is, please.

A Yes. That is the confidential source of information on time and demand public funds of the Security National Bank covering -- well, as it gives it, it is a comparative table for both time and demand, comparing the year '72 with the year '73. It is itemized, it is a summary, as I see it, of much more detailed reports which we prepared and which came out of our data center each month.

Q Is that one of the records that you were just telling the jury about that you kept and maintained with

respect to these municipal accounts and demand accounts?

A Yes, it is.

Q Now, with respect to Exhibit No. 52, will you tell us what that is, please?

A Yes, sir.

This is another report of school district accounts, public fund reports, comparative analysis of net profits or loss of both time and demand deposits, comparing the year '72 with the year '73.

Q And was that likewise one of the records that you told us about you prepared and maintained?

A Yes, sir, it was.

(Continued next page.)

Q I want to show you Exhibit No. 53 and ask you if you can identify that for us, please.

A Yes, sir.

This is a graph showing in pictorial form, based on confidential reports, this report here (indicating), the change in the time deposits of the Security National Bank, public funds only now, from the year '63 -- '68, rather, through the year '72.

Q And likewise, was that likewise one of the records that you prepared and maintained at the bank?

A Yes, sir, it is.

Q I would also like to show you Exhibit 53 -- 54, and ask you if you recognize that.

A Yes, yes, that is a similar graphic form of presentation, a graph showing the increase in Security National Bank public demand deposits, those are the ones with no earnings -- with the earnings on, and that's from the year '68 through the year '72.

Q And was that likewise one of the documents that you maintained with respect to keeping tabs on, so to speak, on these municipal accounts?

A Yes, sir, it was.

Q I would like to show you Exhibit 55 and ask you if you can identify that.

A Yes, this is a consolidated bank-wide Annual Report on public fund balances for the Security National Bank, demand and time. It shows it from month to month and it gives for the year the comparative totals of these funds, that is during the year '70, '71 and '72 and it shows the average yearly balance computed at the bottom of the table.

Q I want to show you, Mr. Hart, Exhibit No. 56 and ask you if you can look at that, sir, and tell us if you recognize that.

A Yes, this is taken from the American Banker, I think, but the source was the Daily Bond Buyer, which is the so-called bible of the securities industry, showing each bank, major bank in the United States, giving the amount of state and municipal obligations or in effect public deposits of the bank and showing the position of that bank from the size standpoint compared with the other banks in the country. This is as of December 31, 1972.

On the left, it shows the position of the bank compared with total deposits, this is what I mentioned before, and it shows the Security National Bank on that --

MR. NAFTALIS: I object to any reading from a document not in evidence, I may have questions about --

THE COURT: He is merely telling us what it represents, that is all.

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MR. NAFTALIS: Your Honor, he is reading from a document that is not in evidence and which may not be received in evidence, necessarily.

THE COURT: That may be true, but he is still reading from something which --

MR. NAFTALIS: He is reading the contents.

THE COURT: The only way I can tell whether it is admissible is by his telling us what it is.

MR. NAFTALIS: Your Honor, might I conduct a voir dire on this?

THE COURT: As soon as it is offered, you may.

MR. KATZBERG: I haven't offered it yet.

THE COURT: He hasn't offered it yet.

When it is offered --

MR. KATZBERG: Your Honor --

THE COURT: You are not listening, either.

THE WITNESS: Can I go on?

THE COURT: You are not listening to me.

A It shows what I said before --

THE COURT: Sometimes lawyers have a habit of closing their ears and I realize that and sometimes it is done with good purpose.

A All right. As of that date, 12/31/72, Security National Bank was the 16th largest bank in the country in

municipal deposits and it was the 44th largest from the standpoint of total deposits, and as of that date -- Well, I don't want to comment extraneously any more, but there are other Long Island banks listed there.

Q Finally --

THE COURT: In any event, you realized, you recognize that piece of paper, don't you?

Q Is that one of the records you were telling us that you maintained?

A Yes.

Q Finally, with respect to those records, I show you 57 and ask you whether or not you recognize that?

A Yes, this is the Long Island Bankers Association's published reports and this is an extract from it of the public deposits of all the Long Island banks, and it gives the total amount, dollar amount of public deposits on two dates, 12/31/71 and 12/31/72.

Do you want me to read further on?

Q No, no.

THE COURT: No, no.

Q Now, with respect to all of these exhibits that we have just referred to, 51 through 57, were each and every one of those exhibits prepared or maintained in the normal course of business of the Security National Bank?

A Yes, yes, sir, they were.

Q And was it in the regular and ordinary course of the business of the Security National Bank to prepare and/or maintain those records?

A Yes, sir, it was.

MR. KATZBERG: At this time, your Honor, the Government offers Exhibits 51 through 57.

THE COURT: Mr. Naftalis, do you want to examine on voir dire?

MR. NAFTALIS: Your Honor, may I conduct a voir dire on this witness?

THE COURT: Which one, as to which one?

MR. NAFTALIS: On Exhibit 56.

THE COURT: 56, all right.

VOIR DIRE EXAMINATION

BY MR. NAFTALIS:

Q Mr. Hart, do you have Exhibit 56 in front of you?

A Yes, sir, I do.

Q O.K. Why don't you just look at that, I will keep my own little copy of it.

Mr. Katzberg asked you whether or not this was a document prepared by the bank --

MR. KATZBERG: I object, I said prepared or maintained.

THE WITNESS: I don't think he said that.

BY MR. NAFTALIS:

Q I take it that that document was not prepared by the bank?

A No, no, sir, it came from a source, I think I mentioned it.

Q You indicated that this document shows the percentage of municipal deposits in each bank; is that correct?

A No, it just gives the size, the classification of all the banks in the country by size, it lists each bank and it gives the dollar amount of state and municipal obligations held by each bank. Those are the public funds. And it also gives on the extreme left their position according to total deposits of the bank.

Q Let me see if I understand --

A That is as distinguished from public funds.

Q Let me see if I can understand it and if you can answer my questions yes or no, good; if you can't, I will give you a chance to explain.

You were testifying about time and demand deposits; is that correct?

A Yes, sir.

Q Now, sir, this chart states, does it not, well,

this chart -- this chart presents the amount of obligations of state and political subdivisions held by the 100 largest banks in the United States; it says that.

A That is correct.

Q "Obligations," are they not; are they not municipal bonds which are something quite a bit different than time and demand deposits?

A No, I wouldn't agree with you on that. They are not, they are not only municipal bonds, they are municipal short-term notes, they are evidence of what the bank buys, these are the so-called public deposits of the bank, these are -- they are both short and long-term, they are not only bonds.

Q Doesn't this chart show, "The percentage of tax-exempt securities held by each bank"? And --

A And --

Q Let me finish, you like to go on.

Which is --

MR. KATZBERG: Objection to the argument.

Q Which are bonds, which are notes, which are things that banks buy and hold, and which are something different, are they not, than demand accounts and time accounts; yes or no?

A It is different -- no -- with an explanation, if you want to hear it, fine, and if you don't --

Q Mr. Hart, would you please tell me where on Exhibit 56 there is any mention that this document purports to show the amount of demand or time deposits held by the Security National Bank?

A The amount of demand deposits, yes, on the extreme left.

Q And what does it say?

A "Position according to deposits 12/31/72."

Q That is all that says, its position according to deposits?

A That is total deposits.

Q What does it say on this chart, where if anywhere on this chart does it indicate that this chart purports to represent time or demand deposits of municipalities held by the Security National Bank or any other bank?

A The state and municipal obligations held are in direct correlation with the amount of time and -- public time and demand deposits held by a bank.

Q I don't want to hear "correlated," what does it state?

A All right, sir.

Q Well, in your judgment they are correlated; is that right?

A Yes, these are.

Q But they are not the same as --

A They are not the same but they are correlated.

Q But this chart purports to show, does it not, the state and municipal obligations held by the Security National Bank and other banks, which are municipal bonds and municipal notes like the New York City bonds or the City of Smithtown bonds?

A Yes.

Q And that has nothing whatsoever to do with time deposits or demand deposits; isn't that correct?

MR. KATZBERG: Objection, asked and answered three times. He says it does.

A Yes, it does, it does have a correlationship.

THE COURT: All right.

A (Continuing) It has a direct correlationship.

MR. NAFTALIS: If your Honor would look at the document itself, it is perfectly plain that this has absolutely nothing to do with demand and time deposits.

THE COURT: He said it does.

MR. NAFTALIS: If your Honor were to read it, there is an explanation on the top as to what it says.

THE COURT: You can go into that on cross-examination.

MR. KATZBERG: The Government respectfully offers

into Evidence Exhibit 51 through I believe it is 57 as being the business records of the Security National Bank, the business records of the bank.

THE COURT: I will allow it.

MR. KATZBERG: Thank you, your Honor.

May these be so marked, your Honor?

THE COURT: Yes.

THE CLERK: Government's Exhibits 51 through 57, inclusive, received in Evidence.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KATZBERG (Continued):

Q Now, Mr. Hart, I want to direct your attention to approximately November of 1967.

Did there come a time in November of 1967 when you had a conversation with someone or someone spoke to you about political contributions?

A Yes, I was called into Mr. Dowd's office --

MR. BANNIGAN: Objection, the question clearly calls for a yes or no answer.

THE COURT: The answer is yes?

THE WITNESS: Yes, yes.

MR. KATZBERG: All right.

Q With whom did you have that conversation?

A Mr. Dowd.

Q What is his first name?

A David Dowd.

Q Now, where did that conversation take place with Mr. Dowd?

A In Mr. Dowd's office.

Q And was this conversation initiated by you or by Mr. Dowd?

A Mr. Dowd.

Q And was anybody else present during the course of this conversation?

A No, sir.

Q And could you tell his Honor and the ladies and gentlemen of the jury --

MR. NAFTALIS: Your Honor, I would like to note that this is not binding at this stage against Mr. Clifford.

THE COURT: At this point it is not binding, it is subject to connection.

MR. KATZBERG: May I continue, your Honor?

THE COURT: Yes.

Q Will you tell the ladies and gentlemen of the jury what Mr. Dowd said to you at that time?

A He said in effect he was giving me a salary increase of $1,700 annually in return for which I would be expected to contribute a hundred dollars a month to various political party campaigns and so forth.

Q Now, did Mr. Dowd indicate how the $1700 figure was determined?

A Well, yes. The $100 a month came to $1,200, the difference would be to pay for the income tax on the higher amount that I would be getting in salary.

Q So as a result of receiving this $1,700 salary increase, how much would these contributions actually cost you?

A They would not cost me anything.

Q Now, was anything said during the course of this conversation as to why these contributions were being made?

MR. COHN: I will object to that, your Honor, as leading.

MR. PATTISON: It is not leading.

MR. BANNIGAN: Your Honor, he is asking --

MR. COHN: Let him ask for a course of conduct.

MR. BANNIGAN: He is suggesting what may have been said.

THE COURT: He is not suggesting. I will allow

it. He is not suggesting. Go ahead.

MR. KATZBERG: Mr. Karr, would you please read that last question.

(The reporter repeated the question.)

A Yes, that, as I recall, it was to enhance our deposit picture in the municipality area.

Q And did Mr. Dowd tell you that these contributions were --

MR. COHN: I object to the form of the question, it is leading.

THE COURT: Yes. The form is bad.

Q Was anything said about voluntariness?

MR. BANNIGAN: Objection to the leading.

MR. COHN: Objection to the form of the question.

A Yes, it is leading.

MR. BANNIGAN: It is about time that he learned to ask questions.

MR. PATTISON: I object and I ask that it be stricken.

THE COURT: He is doing a good job in asking it, everyone likes to ask a question that circumvents the rule a little bit, and there is nothing wrong, I understand that, I have been around for 20 years.

O.K.

fols.

jb/ss

4pm

Q Now, will you tell us what if anything was said during the course of this conversation with respect to these contributions?

A Well, I don't recall much else. I think there was a -- some mention of a political club being formed or something like that. I've forgotten.

Q Will you give us the essence of what was said?

A That was pretty much it. I mean I -- it was told -- I was told that. And that was about it, as far as I can recall.

Q Did Mr. Dowd ask you to contribute at this time?

A No, not at the moment. I believe that he named the -- the name Betty Jaeger was brought in due to the fact that I was giving the money to her or something like that each month.

Q Could you tell us, as best as you can recall, what was said with respect to Mrs. Jaeger, if anything?

A Well, that --

MR. COHN: Your Honor, can we have the time fixed and the place fixed and who was supposed to have said what to him.

THE COURT: Yes.

MR. KATZBERG: I believe the witness already indicated that the conversation took place --

MR. COHN: May we have it from the witness, your Honor.

THE COURT: Yes. Let the witness say it.

The time and place. Fix the time and place.

THE WITNESS: The time and place of this?

THE COURT: Yes.

THE WITNESS: You mean my conversation with Mr. Dowd?

THE COURT: Yes.

MR. COHN: The conversation about Betty Jaeger. Who told him what.

MR. KATZBERG: Maybe I can help, Judge.

Q Was this in the same conversation that you just told us about with Mr. Dowd?

A As nearly as I can recall -- remember, this was some years ago.

Q This was in the same conversation as with Mr. --

MR. COHN: Objection. The witness hasn't said that.

THE COURT: That's the problem.

Was it the same conversation or was it some other conversation you are talking about?

THE WITNESS: I think it was the same

conversation, as best as I can recall.

Q What if anything did he say about Mrs. Jaeger?

A That I would be -- you know, giving the money to her. And it would be funelled through her, as I remember it.

Q Now, was anything said about confidentiality?

MR. COHN: Objection. Your Honor, can we have a side bar? Please, your Honor.

THE COURT: I don't know if this trip is necessary, but we will try it and see.

(The following took place at side bar.)

MR. COHN: Judge, let me tell you why this is important and why we are raising this all the time.

Judge, you have to read these grand jury minutes. You wouldn't believe what you read. This indictment was not obtained on the testimony of the witnesses. This indictment was obtained on the testimony of Mr. Katzberg, who repeatedly asked very, very extensive leading questions. Sometimes going a half a page long.

Now, our position is --

THE COURT: He can do that in the grand jury.

MR. COHN: Well, these defendants are entitled to a fair trial. We don't want --

THE COURT: They will get a fair trial.

MR. COHN: We have been up to now, Judge. I have no complaints. I want to put that on the record.

THE COURT: But the word "confidential" hasn't changed it.

MR. COHN: But the point is, we are going to be faced in a situation where Mr. Katzberg is going to repeatedly be putting words in the mouths of these witnesses for the purpose of making a case. We object to that. That's the reason we are apprising --

MR. KATZBERG: Let me say --

MR. COHN: Please let me finish.

That's the reason yesterday when we concluded that Mr. Ryan alerted your Honor to this. Now, if the pattern is going to be repeated here which was done in the grand jury testimony, Mr. Katzberg is going to be doing all of the testifying and not the witnesses.

Now, he cannot suggest to a witness that they were told to keep this confidential, which is what he is doing. He asked a leading question and we object to it. Then your Honor strikes it. But he has just accomplished what he wants. Mr. Katzberg is an experienced prosecutor and he should be stopped from

doing this.

MR. KATZBERG: Your Honor, these are events that took place some time ago. The recollection to specific conversations are very difficult to relate.

THE COURT: But he doesn't say, "I don't have a recollection."

When you come to recollection --

MR. KATZBERG: With all due respect, a leading question is a question which implies a -- isn't it a fact that you did --

THE COURT: Yes, he can't do that.

MR. KATZBERG: Exactly.

I am asking, was anything said about the conversation.

If the answer is no, nothing was said. If something was said, the answer is, yes.

MR. BANNIGAN: If you can see the grand jury minutes and see where the question was asked -- and it went on for four pages --

THE COURT: First, you must ask, was there anything said. Then, was anything else said. Can you recall anything that was said at this time. If not, do you recall this being said.

MR. KATZBERG: Fine. I will do that.

THE COURT: First you have to lay the foundation for the lack of recollection, whether it be writing or oral. It doesn't make a difference.

MR. PATTISON: Your Honor, directing a witness --

THE COURT: But if you don't, it will lead to an objection.

MR. NAFTALIS: Your Honor, I would object to any refreshing of recollection through a suggestion of an answer.

THE COURT: This is not a suggestion.

MR. NAFTALIS: If he has a document that he wants to show the witness such as the grand jury testimony --

THE COURT: I think everyone has read the grand jury testimony. I don't want to read it. I want to be --

MR. PATTISON: Your Honor, there was --

MR. KATZBERG: Let me just say this. I object to Mr. Bannigan's statements and remarks which are wholly self-serving in nature. They serve no purpose but to add an element which simply does not belong. Statements like, "learn how to ask questions."

THE COURT: I have already covered that.

MR. KATZBERG: There is no purpose for that. He

said it intentionally in front of the jury. I want to voice my strongest objection to that.

MR. PATTISON: May I also --

MR. KATZBERG: It is most inappropriate.

MR. PATTISON: And to facial expressions, smiling and --

MR.BANNIGAN: There was none of that.

MR. PATTISON: And snickering.

MR. NAFTALIS: Except by Mr. Katzberg this morning.

THE COURT: I am sure he didn't do it intentionally. He raised his eyes.

MR. KATZBERG: You mean Mr. Bannigan?

THE COURT: I saw that. Let me tell you something. There isn't anything that I miss. When you stop breathing, I know when you stop breathing. I know when you are holding your breath.

MR. BANNIGAN: Your Honor, the degree -

THE COURT: I don't sit up there and get stupid. I think I've gotten smarter.

MR. BANNIGAN: I know that one question --

THE COURT: Common sense is my greatest asset.

MR. BANNIGAN: Your Honor, on the question of asking the witness, I certainly have no objection as to

was anything else said. And if the witness says,"I don't recall," I have no objection to taking any piece of paper in this Courtroom and --

MR. KATZBERG: Fine.

MR. BANNIGAN: But I do object to him saying, "Was anything said about --" and then if he says, "I don't recall --"

THE COURT: Okay.

MR. BANNIGAN: That I have an objection to.

THE COURT: All right. Let's get going because if these jurors see how hard it's snowing out there, we are going to have a problem here.

(End of side bar.)

THE COURT: All right.

BY MR. KATZBERG:

Q Now, again, I am referring to this conversation that you had with Mr. Dowd?

A Yes.

Q You have given us in substance your recollection. Can you recall anything else that Mr. Dowd may have said which was -- with respect to these contributions?

A No, I don't think so. He didn't elaborate too much on it.

Q Now --

A As I understood myself, what the thing was.

Q I am sorry, I didn't hear you.

A Well, in other words, I understood the need for this.

Q Now, did you agree to contribute at this time, sir?

A Yes, I agreed in that I didn't say, no. Yes.

Q Now, did there come a time, Mr. Hart, when you received the $1,700 salary increase that Mr. Dowd promised you, sir?

A Yes. I believe it was on the next payday, as I recall.

Q I would like to show you, Mr. Hart, what has previously been marked as Exhibit No. 25 for identification. I want you to look at it, sir. And I want you to tell us whether or not you see that salary increase that you were promised for the contribution.

A Yes, I see it here.

Q What is the date of that?

A November 27, 1967.

Q And how soon after your conversation with Mr. Dowd was that salary increase?

A Well, it was within a week or two. Because we got paid on a bi-monthly or bi-weekly basis. I guess every

other week we got paid.

Q What is the amount of that salary increase?

A It shows to be $1,700 annually.

Q Now, again, with reference to this exhibit, Exhibit No. 25, do you recollect the contents of the information contained on that exhibit, sir?

A Yes. This is my personnel record.

Q To your knowledge, are all the entries on that exhibit a fair and accurate representation of your salaries and the dates of your salaries at the bank?

A Yes. Up to the date when it ends. Yes.

MR. KATZBERG: At this time, your Honor, the Government will offer Exhibit No. 25 into evidence.

MR. BANNIGAN: No objection from the bank.

THE COURT: All right.

MR. NAFTALIS: No objection.

THE COURT: All right, no objection.

MR. KATZBERG: May it be marked?

THE CLERK: Government Exhibit 25 received in evidence.

(So marked.)

THE COURT: I think I'd better advise the jury at this time that the numbering may not make sense to you. You may have understood that the exhibits in

evidence are usually marked 1, 2, 3, 4 and so on. Well, the reason for the numbers appearing to be out of order is because they were marked as identification exhibits prior to your being selected as jurors so that there wouldn't be a holding up of the proceedings. Because there are many, many documents that were marked for identification. So that now he is proceeding and the documents may be marked. It was marked as 25 and it will keep that number because that was the original number for it. That is the only reason for it.

MR. KATZBERG: May I proceed, your Honor.

THE COURT: Yes.

Q Now, Mr. Hart, did there come a time after you received the $1,700 contribution increase when you began to make contributions?

A Yes, it was shortly thereafter. Each payday at that time, as I remember, I used to remit $50 in a sealed envelope marked confidential -- it was in the same building -- to Miss Betty Jaeger.

Q Now, approximately when did you begin making these political contributions?

A Well, on my first -- my first increase. The first day of my increase.

Q Which would be around December of 1967? Is

that about right to you?

A Yes, that's approximately correct, yes.

Q Now, what form did these payments take, sir?

A At that time they were remitted in -- let's see. I wrote a -- I believe I wrote a check to Betty Jaeger in that amount. I think that's the way it was.

Q Did there come a time when you ever paid cash in this manner?

A Yes. Perhaps it was cash in those days. It changed over. Because she was in the same building. And I think it was easier to do it in the form of cash. It was either a check to Betty Jaeger or in the form of cash.

Q Now, how did you physically transmit this money, whether it was cash or in the form of a check to Mrs. Jaeger?

A Well, in the sealed envelope saying, Miss Betty Jaeger, on the outside, and confidential. And that was it.

Q Now, you indicated that you were in the same building with Mrs. Jaeger; is that correct?

A Yes. Up in Huntington.

Q Did there come a time when you moved from that building?

A Yes. We moved to Melville, our department did, about a year or so later. I guess about a year later.

Q After you moved to Melville, did you continue to send your checks or cash to Mrs. Jaeger?

A Well, I didn't send cash any more. That would have been foolish. I believe then they became in the form of checks drawn to the order of Betty Jaeger.

Q Once you were in a different building to Mrs. Jaeger, how did you transmit the checks?

A Through an inter-office system, and again in a sealed envelope marked confidential, and addressed to her.

Q Now, Mr. Hart, I want to show you some items which have previously been marked as Exhibit 59, separately as 59-A and 59-B, and I want you to look at the contents of the exhibit for identification 59, 59-A and 59-B, and tell us whether or not you recognize what that exhibit contains?

A Yes. These all are the checks which I have drawn over a period of some years to the order of different people. They start off to the order of Mrs. Betty Jaeger, dated January 7th of 1969 in the amount of $50.

January 21st, 1969 to the order of Mrs. Betty Jaeger in the amount of -- shall I keep on going?

Q No sir. My question is, do you recognize those checks as any particular checks of yours?

A Yes. These are all my checks drawn by myself.

Q Are those the checks that you wrote pursuant to

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this contribution organization?

A That's correct.

Q Now, the first check is dated in January of 1969; is that correct?

A Yes. January 7th of 1969.

Q Who was that check payable to?

A Mrs. Betty Jaeger, in the amount --

Q After that first check, were more -- do the checks that follow continue to be written to Mrs. Betty Jaeger?

A Yes. They do for a while here.

Q When is the last of those checks made payable to Mrs. Betty Jaeger?

A I am going through it.

Q Take your time.

A They end on September 10th, 1970. There is a check drawn to the order of the Plainview Old Bethpage Republican Committee in the amount of $50.

Q All the checks prior to that were drawn payable to Mrs. Jaeger; is that correct?

A Yes. All these checks were.

Q Now, with respect to the checks that you just spoke about, drawn payable to the Plainview Old Bethpage Republican Committee, to whom are the checks drawn that

follow that check in August of 1970? Are any of those checks drawn to Mrs. Jaeger after that?

A No. They cease to be drawn to her. They now seem to be drawn directly to various political entities on Long Island.

Q Mr. Hart, how did it come about that in September of 1970 you began to draw these contribution checks to the specific political entities?

A Well, I was given instructions, or I got word from my superior at the time -- I forget who it was -- to --

MR. NAFTALIS: Your Honor, unless he can identify who the conversation was with, I move to strike it.

THE COURT: No. As a result of a conversation --

MR. NAFTALIS: Does he recall who he spoke to.

THE COURT: He doesn't recall who. This is as a result of someone telling him.

Go ahead.

THE WITNESS: That I would be informed by a Mr. Arthur Chadwick to whom to draw the checks. That he would telephone me or that I was to be in communication with him.

Q Approximately when were you given this information, sir?

A This was obviously on or about September of 1970.

Q Were you told why there would be this change?

A No, not particularly. There was -- I had no reason to question -- to go into it in great depth. I accepted it as being an order -- instructions from a superior.

Q Yes sir. Are each and every one of those checks from the -- the one to the Plainview Old Bethpage Republican Committee in August of 1970 onward, were each and every one of those checks drawn by you as to Mr. Chadwick's instructions?

A Yes. I would say so. There was -- they are all on instructions of Arthur Chadwick to draw them to a certain political entity. Yes. Or I assume he claered it with whoever he cleared it with.

Q I am sorry.

A I assume he cleared it with someone.

MR. COHN: Your Honor, I object.

THE COURT: No, you can't -- strike out the assumption.

THE WITNESS: All right.

Q Now, during this time that you wrote the checks payable to -- based on Mr. Chadwick's instructions, did you ever yourself choose the recipient of any one of those checks?

A Well, not choose the recipient. But I suggested in one instance because I was the contact officer on the County of the -- the Nassau County account, that it would be preferrable, I told Art Chadwick, to have my name on the check. That would carry more weight to obtain deposits and --

Q My question is, sir, on any of the checks that you wrote based on Mr. Chadwick's instructions, or were any of the payees chosen by you, sir?

A No, not --

MR. COHN: Your Honor, he's asked the question and he's got an answer. He said in one case he selected the checks and he wrote his own check.

THE COURT: All right, he's answered.

Q To your knowledge, was it Mr. Chadwick who determined who the payees of these checks would be? Was that his decision?

A It was his voice that said it. Yes. It was not -- it was not his decision. He was too low.

MR. COHN: I object to that, your Honor.

MR. RYAN: Unless he knows.

THE COURT: It's speculation, I'd say.

All right. His voice. It's speculation as to the balance of it.

THE WITNESS: He was the one who told me t[illegible] I communicated with him.

THE COURT: All right.

(Continued next page.)

BY MR. KATZBERG:

Q Now, how did you physically transmit these checks to Mr. Chadwick?

A Against, as I recall he was in the same building down there for a while, down in Melville. So it used to be transmitted to him there. Generally it was in a sealed envelope marked confidential.

Q I want to go back to the checks payable to Mrs. Jaeger and the cash that you gave her.

A Yes.

Q Did you ever know where the money went after you gave it to Mrs. Jaeger?

A No, I did not.

MR. KATZBERG: At this time, the Government offers into evidence Exhibits 59, 59-A and 59-B.

MR. COHN: May we see the checks, your Honor, please?

THE COURT: You may see them.

(Exhibits handed to defense counsel.)

(Pause.)

MR. KATZBERG: I believe one of the jurors indicated she was cold.

THE COURT: Are you cold now?

JUROR NO. 9: Freezing.

THE COURT: We're going to suspend in a few minutes. Can you hold out that long?

MR. KATZBERG: I only have five or 10 minutes more.

MR. NAFTALIS: We could cross-examine him tomorrow morning. No need for the lady to get sick.

THE COURT: We will just put the checks into evidence.

MR. KATZBERG: If I can just finish the direct examination?

THE COURT: Yes.

THE CLERK: Government Exhibits 59, 59-A and B, received in evidence.

(So marked.)

BY MR. KATZBERG:

Q Now, Mr. Hart, did you ever hear of an organization called the Long Island Public Affairs Club?

A Yes, I heard of that when I was up in Huntington, when we had moved to a different location in Huntington.

Q Approximately when for the first time did you hear about the Long Island Public Affairs Club?

A Well, as I recall, when Joe Dutra was my superior.

Q Who informed you of this?

A I think it was in conversation when we were discussing political accounts and so forth, public accounts.

Q Who told you about the Long Island Public Affairs Club, is my question.

A As I recall, Joe Dutra, but it was casual conversation. It wasn't a particular subject where I came into the room and we talked about it.

Q Will you tell the ladies and gentlemen, as best you recall, what was said about it?

MR. COURT: Again, this is being taken subject to connection?

THE COURT: Yes.

A I think he said this was a way it would be legal and proper for the bank to make these various political contributions to various political entities.

Q Were you ever informed you were a member of the Long Island Public Affairs Club?

A I don't recall I was told I was a member. It was probably said in conversation but not a specific reference.

Q To your knowledge, did you ever make any contributions to the Long Island Public Affairs Club?

A No. All the contributions are in those checks.

Q Let me show you Exhibit 59, sir, the last checks you wrote to Betty Jaeger; specifically checks dated August 19, 1970, and August 25, 1970 -- for the record, all a part of Exhibit 59.

Who are they made payable to?

A Mrs. Betty Jaeger.

Q Tell us what the endorsements on the backs of the checks read.

A You are absolutely right. It says L.I.P.A. Club. It looks like Betty Jaeger.

Q To your knowledge, you were not a member of that club?

A No.

Q You were never told that any of your money was going there; is that correct, sir?

A No, I didn't know it.

Q Now, again, Mr. Hart, with reference to Exhibit No. 59, the checks that you identified, you indicated, did you not, that each and every one of these checks were drawn by you as per Mr. Chadwick's instructions?

A Yes.

Q I want to direct your attention to two of those checks in Exhibit 59; one, December 9, 1970, the other dated January 13, 1972.

Could you tell us who the payee of those checks are?

A William A. Shea.

Q Were those checks drawn by you to Mr. Shea's order at Mr. Chadwick's direction, sir?

A Yes.

Q Who was Mr. Shea?

A He was the -- part of the bank's counsel and member of the Board of Directors of Security National Bank.

Q Did you ask Mr. Chadwick why you were to be drawing a check payable to Mr. Shea's order?

A No, sir. I did not question that.

Q Did there come a time when you advanced the contributions club some money?

A Advanced the contributions club some money? No, I never did -- you mean the club some money? No.

Q Let me rephrase it.

Did there come a time when you wrote a check and were paid back for that check, sir?

A Oh, yes. I think I know the check you are referring to, if I may describe it.

Q Tell us about that, please.

A This was a check drawn for a thousand dollars

to the Nassau County Republican Committee. It was previously decided or there had been some word as to the amount that would be contributed apparently.

I was in conversation with Art Chadwick and this was the amount determined, according to him, that was to be contributed to the Nassau County Republican Committee and I suggested it would be more effective if I wrote the check, since I was contact officer at that time for the County of Nassau.

Then I was reimbursed for all but $100 of that by checks from other officers of the bank, again on instructions of Art Chadwick.

Q In other words, $100 of the thousand was your contribution, and you were reimbursed?

A The other $900 I kept a fairly accurate record of.

Q You kept records?

A I kept records of all my contributions in Long Island.

Q I want to show you Exhibit 58 for Identification and look at it and tell us if you recognize it.

A This is a record in my own handwriting that I kept over the years.

On the left-hand side it says "Received" --

as accurately as I could, of the amounts I got for these political contributions -- and on the right-hand side, the disbursements.

Q Did there come a time when you ceased making these contributions, Mr. Hart?

A Yes, there did.

Q Approximately when did you cease making these contributions?

A I would say -- don't hold me to it -- I'd say '73 or '74.

Q Let me show you the checks and see if that refreshes your recollection as to the last time you wrote checks with regard to this contribution scheme.

MR. RYAN: Objection to "contribution scheme."

Q Sorry. I mean contribution organization.

A March, 1974.

That's the last time you made the contributions?

A Yes.

MR. KATZBERG: I would like to offer that in evidence.

THE COURT: I think with that we will finish.

MR. KATZBERG: I am finished with that,

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your Honor.

(Exhibit shown to defense counsel.)

MR. RYAN: May we look at this over the evening, so we can recess?

MR. KATZBERG: No objection.

THE COURT: We will recess until tomorrow morning. I guess 10:00 o'clock, if you can get here.

JUROR NO. 8: Would I be allowed to see one of those checks?

MR. KATZBERG: No objection.

MR. RYAN: No objection.

THE COURT: You want to see it now?

JUROR NO. 2: No.

JUROR NO. 8: I would like to see just two checks now. It would take one minute -- the two checks paid by Long Island Public Affairs Club --

THE WITNESS: The one with the endorsement on the back?

JUROR NO. 8: Yes, I want to see the front. I'm sorry. May I apologize to all of you?

MR. KATZBERG: They are buried in here somewhere.

MR. NAFTALIS: You want me to help you?

MR. KATZBERG: Yes. Evidently I put them out

of order.

MR. NAFTALIS: Here they are.

MR. KATZBERG: For the record, these are part of Exhibit 59.

THE COURT: Just how them to her.

(Checks handed to Juror No. 8.)

(Pause.)

(Checks handed back to Government counsel.)

THE COURT: We will recess until tomorrow morning at 10:00 o'clock.

Do not discuss the case or read any newspapers about the case and do not listen to anything that may come over media one way or the other.

Goodnight and keep an open mind.

(Jury excused.)

MR. RYAN: For the record, your Honor, before he offers the exhibits in, I assume you are taking it subject to connection, because the witness said nothing about Frank Powell.

THE COURT: No, no. They are all subject to connection, most of the exhibits are.

* * * *

WINSTON HART, called as a witness, having been previously duly sworn, took the stand and testified further as follows:

THE COURT: All right, take the stand.

THE CLERK: Mr. Hart, please be advised that you are still under oath.

THE WITNESS: Yes, thank you.

MR. KATZBERG: May I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Hart, you recall yesterday during the course of your direct examination by me, you said that you wrote a $1,000 check pursuant to the contribution matter at the bank, and that you were reimbursed for the $1,000 -- for $900 of it by the other club members; is that correct, sir?

A Yes, sir.

Q I want to show you a check dated October 15, 1970, which is part of the exhibit 59 already in evidence, and I ask you if you recognize that check, sir?

A Yes. This is one that I wrote to the Nassau Republican Victory Journal for $1,000 on October 15, 1970.

Q Is that the check you're referring to?

A Yes, that is the one.

Q Now finally, Mr. Hart, with respect to Exhibit 58, which you recall yesterday you identified as the record that you personally kept by your contributions and the repayment of that check, sir --

A Yes.

Q Is 58 that exhibit, sir?

A Yes, that is.

MR. KATZBERG: At this time, your Honor, the Government will offer into evidence Exhibit 58.

MR. BANNIGAN: No objection.

MR. KATZBERG: May it be so marked?

THE COURT: Mark it.

THE CLERK: Government Exhibit 58 received in evidence.

MR. KATZBERG: At this time, your Honor, I have no further questions of Mr. Hart.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. RYAN:

Q Is Mr. Powell on your list that is being exhibited?

A Are you addressing me?

Q Yes. I am Mr. Ryan. I am the attorney for Frank Powell.

A Is Mr. Powell on the list personally?

Q Yes. Did you write his name down as repaying you for that thousand dollars?

A No. I am quite certain.

Q He had nothing to do with that, did he?

A No.

MR. RYAN: No further questions. Thank you.

MR. COHN: Your Honor, may I have your permission to work from this table when I question the witness? I don't think he will have difficulty hearing me.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. COHN:

Q My name is Irving Cohn. We have not met, have we?

A No, not to my knowledge.

Q You have never spoken to me at all and I have not spoken to you?

A No, I don't think so.

Q And, Mr. Hart, I want you to know that I represent Dave Dowd. You know Dave Dowd, do you not?

A Yes. I think that's been established here, yes.

Q How long have you known him, Mr. Hart?

A Let's see. I guess when I went to work for the Security National Bank was the first time.

Q And that was -- that was about when?

A About ten years ago.

Q You had worked with him and the Security National Bank until 1972 when he resigned?

A No. 1974. October of 1974.

Q You worked in the Security National Bank until 1974; is that right?

A Yes.

Q But Dave Dowd resigned from the bank in 1972?

A Yes. That's approximately correct. He resigned to become President of Nassau Trust.

Q Mr. Hart, you told us yesterday that yourjob with Security National Bank was that of a calling officer?

A Basically, yes.

Q All right. Since we don't have that much familiarity with the different jobs of different people in the bank, could you tell us in your own words as simply and as easily as you can just what you did as a calling officer?

A Well, it was basically to obtain deposits for the bank and to thereby increase the earnings of the bank through a calling program, telephone contact, using my

experience over the past thirty years in banking.

Q So that you have had thirty years of experience in acquiring knowledge as to where you can contact people to try to induce these people to bring their deposits into the bank thatyou are working for at the particular time; is that right?

A Yes. It was a solicitation program.

Q All right. And would you say, sir, if I can try to relate this to a more common type of employment, would you say that you are almost in the nature of a salesman for the bank?

A Yes. I was -- it's a civilian -- yes. That would be approximately correct, yes.

Q All right. In other words --

A To civilian --

Q Let's say, if you have a manufacturing company that was trying to sell its product, they would have a salesman? And the bank wants to get deposits so it can earn from these deposits, and it would be your job to go out and contact people and try to induce them or the organization they represent to bring their deposits into the bank; is that a fair statement, sir?

A Yes. That's correct.

Q All right. Now, Mr. Hart, when you did your

job, and, I take it, you did your job well? Would you agree ith me, Mr. Hart?

A Well, I am not competent to state that.

Q Okay. When you did your job, the first thing you would do would be to ascertain who would be potential prospects for you to contact to try to get their account; isn't that correct?

A Yes. I am with you so far.

Q Now, how would you go about doing that?

A Contacting, telephoning, luncheons, internal discussions within the bank with knowledgeable people who could assist me professionally in these things.

Q And once you concluded that there was a good potential customer, then you would go about and do various things to try to contact that customer; is that correct?

A Yes.

Q Do I use the term correctly? Does the bank use the term "customer" with regard to customer deposits?

A Prospects. There were -- a customer, by the way, is one that already has an account with the bank. The prospect is one we are trying to get an account from. That's the difference.

(continued next page)

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Q All right. Let me use the word "prospect." Is that correct?

A Yes.

Q Was there a time when you were involved with contacting prospects who had, say, corporate accounts that you were trying to attact to the bank?

A Yes. Sure. In the years at the Security National Bank. Yes.

Q You told us that you also contacted prospects who had municipal accounts; is that correct?

A Yes.

Q All right. But before you get into the municipal account department, as I remember your testimony -- and if I am wrong, correct me, will you please -- I think you first had some experience with -- some experience with the Security National Bank corporate account; is that correct?

A Yes. I still do that type of calling for my present bank.

Q All right. And you would do -- what you would do is call on these corporations? Would you have lunch with the officers of the corporations, perhaps?

A Where appropriate. Yes.

Q And would you go out to dinner with some of them, perhaps?

A More infrequently.

Q Infrequently. Would you talk to them on the telephone?

A Yes.

Q Would you try to go to various groups or associations where you would come in contact with these people like the Chambers of Commerce dinners?

A That's correct.

Q And local Rotarian groups of that type?

A Some of them.

Q Some of them.

And would you go there because this would give you an opportunity to meet executives of corporations and business people?

A That's correct.

Q And when you would go to these dinners, would you have a card with you, Mr. Hart?

A A calling card, yes.

Q And would you talk to these people?

A Yes.

Q Perhaps have a drink or a bite with them?

A That's correct.

Q Try to establish some sort of a social relationship with them?

A Well, yes. Yes, you could call it that.

Q So that at least when they --

A A rapport is what you call it. A rapport.

Q All right. That's a much better term. Thank you.

You have some rapport with these people so that when you spoke to them on the telephone they would remember who Winston Hart was?

A Yes.

Q All right. And then there came a time when you were assigned to Dave Dowd's department; is that correct?

A I think I was always more or less assigned to Dave Dowd's department right from the start.

Q Was Dave Dowd -- was he involved in the marketing branch of the bank?

A Yes. He was my boss.

Q He was your boss?

A Yes.

Q And both you and Dave Dowd were working for the bank in that part of the bank's organization that was involved in bringing in new accounts into the bank; is that correct?

A Yes.

Q And you got paid a salary for doing that work; is that right?

A Yes.

Q As far as you know, Dave Dowd got a salary for his work, and he was your boss; is that right?

A Yes.

Q And you were -- you would talk to him from time to time about what you were doing and an exchange of ideas; is that correct?

A Yes.

Q Sometimes you would ask for his opinions and sometimes he would ask you your opinion; is that correct?

A Yes. It was an exchange.

Q An exchange of ideas.

A Yes.

Q All right. Now, then, as I remember your testimony, there came a time, Mr. Hart, when you began to do some work with respect to municipal accounts; is that correct?

A Yes.

Q All right. And tell me, sir, were there any published materials that you had access to and that you used to determine who were potential prospects, as you described them?

A Well, there are various professional journals that list the -- I mean, of course, all of this is public information. Public officials. The names of the public officials, elected officials, Assemblymen, the legislators, the

fiscal officers of towns, villages and so forth. These are regular public information journals.

Q These are published from time to time; is that correct?

A Oh, yes. Periodically.

Q Let's for a moment confine ourselves to the Long Island area where these publications, this public information about all these things you told us about, they were all distributed and available to anybody working in the -- in Nassau County and Suffolk County, what we call Long Island? Anybody could get them? Anybody could get them? You got them; is that right?

A Yes.

Q This was part of your job to contact these people; is that right?

A Yes. Through contacting these officials.

Q And also to read the publications so you could find out who to contact?

A Yes.

Q There was nothing secret about who had the accounts or who the officials were, who the controllers were, who were the fiscal officers? This was all part of public information that you could find and you did use as part of your job; is that right?

A Yes. This is still public information.

Q That's right. Thank you.

As a matter of fact, this public information was not only available to you, but it was available to every other bank that was operating in Nassau and Suffolk County or Long Island; isn't that right?

A Yes.

Q Including -- it was available to those men who had an equivalent job to yours in the banks that were competing with the Security National Bank; is that correct?

A Yes.

Q Could you name for us, please, some of the banks that were operating in Nassau and Suffolk County in the years 1966, '67 -- let's say, to 1972 while Dave Dowd was with the bank that in your opinion were competing with the Security National Bank?

A Well, the main competitor, of course, was the Franklin Bank. Then I guess the National Bank of North America, Long Island Trust, Hempstead Bank. That was basically it.

(Continued on next page.)

Q Now, would you say, Mr. Hart, that in these banks every one of them also had a contact officer similar to you; is that correct?

A Yes, that is correct.

Q And as a matter of fact, did you ever meet these people, these other contact officers for any of these other banks at any dinners or social events?

A Yes, quite frequently.

Q By the way, you did attend some of these dinners, these testimonial dinners or golf outings that were sponsored by these different organizations?

A Yes, when requested by my superiors.

Q You would go?

A Yes, when requested by my superiors.

Q When you were requested by your superiors you would go to these affairs, and when you went would you also see your counterparts, so to speak, those from the Franklin National Bank and from other banks that you mentioned, they also attended these functions, didn't they?

A Yes, sir, they did.

Q And all of you were there primarily for the same function, isn't that correct, to make contact with people; isn't that right?

A Well, we were there because we bought tickets,

too, I guess.

Q Yes, that is right.

Well, when you bought tickets, and let us take this one thing at a time, let's say you went to a testimonial dinner, well, what would be the average of your attendance at some of these testimonial dinners that you attended?

A It was in the hundreds.

Q The hundreds: right?

A Yes.

Q And the people who were there in these hundreds were people -- incidentally, was there anybody else from the Security National Bank who would go down with you?

A Yes, there were others there, generally.

Q And did you recognize that at these testimonial dinners there were also representatives from other banks?

A Yes, there would be others.

Q In fact several representatives from each individual bank; is that right?

A Yes.

Q All right.

Did you recognize any other people who attended, the business people who attended these functions?

A Yes, there were a variety of business executives and so forth.

Q Did professional people attend?

A Yes, professional people would attend.

Q Lawyers would attend?

A Lawyers, a lot of lawyers.

Q A lot of lawyers.

And would you say that representatives of the various municipalities would attend?

A Yes, they would.

Q And these were people you would meet and talk to and mingle with; is that correct?

A Yes.

Q That is right.

Now would you take your business calling card with you when you went to these testimonial dinners?

A Yes, always.

Q Always.

If you saw an old friend you would give him one, wouldn't you, sir?

A That is correct.

Q And if some old friend would introduce a potential new friend to you, you would be gracious to this potential new friend; is that correct?

A Yes -- well, there was contact made, surely.

Q That is right, and that is one of the things you

accomplished at these testimonial dinners; is that correct?

A Yes.

Q Now that would be true of any of the other political functions you may have attended as you have told us?

A Yes.

Q So you were not the only contact with these people?

Now, was there ever a time when you might meet somebody who was a customer ofthe Bank, and you told us about a prospect, somebody who was not a customer, but there might be somebody whom you met who was a customer --

A By appointment, yes.

Q And your job was more than just going out and telephoning people; isn't that correct?

A Yes.

Q You also rendered service to these people; did you not?

A Well, a service to them?

You will have to define that just a little better.

Q If these people had a complaint, these are people with the bank, bank customers, would you talk to them and try to straighten out the problem?

A Sometimes, but that was not the main part of

my duties.

Q No, but at least you were available if somebody came to you at a dinner and said, Do you know I had trouble with our payroll account, will you try to help me out and find out what the trouble is.

A Sometimes that happened, yes.

Q Yes, all right.

Now, were there times when you would approach, say, a fiscal officer and talk to him about either opening an account at the Security National Bank or transferring his account to the Security National Bank, and at that time would you outline to that fiscal officer what the services of your bank were, what services your bank could render to this agency?

A Yes, in the normal course of discussion.

Q As a matter of fact the bank did have special services that it rendered to its customers, did it not?

A Are you talking about now public accounts? The demand accounts? You have to differentiate.

Q Let us talk about accounts generally.

For example, the bank had a payroll section, it worked on payrolls for different concerns.

A Yes, that was a part of it.

Q They would do that for a corporate account?

A Yes.

Q Would they do it for a municipal account?

A Sometimes.

Q If they were requested to do it, they would do it?

A Yes.

Q As a matter of fact one of the things -- wasn't one of the things that the bank was concerned about and which these municipalities were concerned about is whether or not the bank would buy their bonds or their notes?

A You mean the bank was concerned or the municipality?

Q Wasn't the municipality concerned about it?

A Not bonds too much.

You have to differentiate between bonds, which are long term and for investment and short term borrowings.

Q Let us take the short term borrowings.

A Yes, the short term borrowings, yes.

Q One of the things that the fiscal officers were interested in, as you recall, was the short term borrowings; is that correct?

A Well --

(Continued on next page)

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MR. PATTISON: Your Honor, we object to this witness' testimony about whatever interest anyone else had.

MR. COHN: These are the customers in municipal accounts.

THE COURT: I will allow it, to show the difference between municipal bonds and other paper.

MR. PATTISON: Well, if those fiscal officers said anything about it, well --

THE COURT: The operation of someone else's mind, that is never admissible.

MR. COHN: Let me withdraw the question, Judge.

BY MR. COHN:

Q There were times when fiscal officers would say to you: Would the bank be willing to buy some of our short-term obligations; wouldn't that come up?

A Yes.

Q And you would say: Let me see what I can do for you, and then you would bring it back to somebody in the bank?

A This was on open-bid basis. Open-bi .

Q There is no question --

A This wasn't a private matter, it was open bidding.

Q Forgive me if I gave a mis-impression. What I am trying to establish with you is that these municipalities needed money from time to time; isn't that right?

A They borrowed just like a corporation.

Q And then they would buy their own local government issues, certain short-term notes; is that correct?

A Yes.

Q And all the banks would compete?

A Would bid.

Q Bid for these notes; right?

A Yes.

Q And it was helpful to you if the Security National Bank would bid on some of these notes because it was something that your prospector or customer would be happy about; isn't that right?

A You are not putting it correctly, if you bid the lowest, you took the notes into your portfolio and that was a source of deposits.

Q That would be a source of deposit; isn't that right, in other words, if the Security National Bank bid the lowest on municipal short-term notes, then that could be a source of that municipality making deposit into the bank; isn't that right?

A Yes, sir. Yes, sir.

Q And that would be something that came to your attention as a part of your job; isn't that right?

A Right.

Q Now, Mr. Hart, could you estimate for us, say during the years 1970, '71 and '72, how often you would attend these dinners?

A I think quite frequently.

Q Would you say two or three times a week?

A Sometimes.

Q Sometimes, is that correct, so that not only did you work the normal work day from nine to five that others -- that you and other bank employees put in at the bank -- but you also had to spend two or three times, sometimes, of your evening; is that correct?

A Yes.

Q All right.

And how about Saturdays or Saturday nights, did you ever find yourself attending dinners on these nights?

A Yes.

Q With others of the bank or other employees of the Security National Bank?

A Yes.

Q And you considered that a part of your job; did you not?

A Yes, sir.

Q All right. Now, Mr. Hart, I would like you to work with me, if you could, when you were on the witness stand yesterday, Mr. Katzberg showed you some papers that I believe you delivered to him and you referred to them as some records that you had made that related to demand deposits and time deposits and some profitability. Do you recall those exhibits?

A Yes, sir.

MR. COHN: May I have them,please. And I'm referring now first to Government's Exhibit 51.

MR. KATZBERG: They are all in this.

These are all of them (indicating).

MR. COHN: Will you bear with me a minute, Mr. Hart.

THE WITNESS: Sure, take your time.

MR. COHN: I am going to.

Mr. Katzberg, will you concede that these two constitute Exhibit 51?

MR. KATZBERG: Yes.

MR. COHN: All right. All right.

Q Mr. Hart, I have a copy of this so I'm going to leave this with you and I want to ask you some questions about it; O.K.?

A Sure.

Q Mainly, what I am interested in is for you to explain what it is on this exhibit, O.K.?

A Yes, sure.

Q And I merely want to call to your attention -- well, apparently it is separated, one speaks of municipal accounts, in one part, and the other part speaks of school accounts, and I am going to talk to you about both.

A All right.

Q O.K.?

A Yes.

Q Now, Mr. Hart, I would like you to appreciate that most of us in this courtroom are not bankers and are not familiar with the banking terms that you use every day in your common parlance, and so what I would like you to do, first, is to explain to me the definition of some of the words that you used in this exhibit. All right?

A Yes.

Q Now, for example, on the very upper right-hand side corner you state, "Source of information," and then you have the words, "time" and "demand"; am I reading it correctly, Mr. Hart?

A Yes, sir, right.

Q All right. Now, first, so that we clear up any

mystery about this, let us -- would you -- would you explain to us just what a demand deposit is, and try to explain that to us, if you could, Mr. Hart, in ordinary layman's language.

A Well, as I explained yesterday, a demand deposit is one on which the bank does not pay interest, it is the more desirable type of account from an earnings standpoint for the bank. These are your normal business accounts, corporations carry them, they are the operating accounts, those payroll accounts and so forth.

Now, the time accounts --

Q Let us, if I can interrupt you, please, and will you excuse me, let me just stop you and talk about the demand account for the moment, and in very simple layman's language, is a demand account the kind of account that I would have if you attracted me as a prospect into the bank and I walked in and I opened up a checking account and made a deposit for $500?

A Yes, it is a checking account, in common parlance.

Q I see. And that is a demand account?

A Yes.

Q That is where I have $500 in the bank, I get no interest from the bank but I have the privilege to write checks against that account; is that right?

A Yes, it got its terminology by the fact that the customer can walk in and demand his money at any time he wants it.

Q That is very good. In other words, it is called a demand account because the customer can walk in at any time and demand his money and the bank has got to pay it; is that right?

A Yes, sir.

Q So that the bank has got to be prepared to have that money on hand and pay that money out?

A That is correct.

Q And I don't have to give the bank any notice as to when I want to clean out that account?

A Yes.

Q And the bank has got to pay it when I demand it?

A Right.

Q O.K. Now, you mentioned as types of demand accounts, for example, a checking account?

A Yes.

Q And these municipalities did open something that was like a checking account from which they used to pay their ordinary bills; isn't that right?

A Yes, some of the accounts were so-called

operating accounts and they were used to pay the normal bills of the municipality, yes.

Q And you also said the payroll account; is that correct?

A Yes, a payroll account.

Q In other words -- let us stop there, if there were a payroll account, that would also be the type of account where the municipality would put the money into the bank and then every week when they paid the employees or every two weeks, whatever the practice was, when they paid the employees working for that particular municipality, they issued payroll checks from the municipality to the employees who, in turn, would cash their payroll checks, and that would be a type of demand account?

A Yes, sir.

(Continued on next page.)

Q Is there any other type of demand account that you can think of?

A Yes, one very important one is the Receiver of Taxes account.

Q All right.

Now, the Receiver of Taxes would collect the taxes; is that correct?

A Yes, collect taxes.

Q He would collect taxes from the taxpayers and he would, by law, have to deposit those monies in a commercial bank on demand?

A Yes.

Q Is that right?

A Yes.

Q So that whenever -- well, let us take the Receiver of Taxes for the town of Oyster Bay where I come from, okay?

Now when I pay my taxes that check would go into the Receiver of Taxes; is that correct?

A Yes.

Q Now, let us assume that he had an account at the Security National Bank, and I don't know whether he did or did not, I'm only using this for illustration -- is that correct?

A Yes.

Q He would deposit all of these collections from all the different home owners who pay their real estate taxes, he would deposit it into a bank; is that right?

A Yes.

Q Now did the bank render any services to him, did they have computer records or did they render any reports to him as to what deposits the bank had from day to day or month to month?

A Well, he received his monthly statements, there is very little activity in these accounts, that is what made them desirable.

Q But there came a time when the Receiver of Taxes had to take that money out because the whole town of Oyster Bay operated out of that money?

A Yes, sir, they would.

Q The various bureaus, the Department of Highways, the Department of Parks, the Department of -- all of these departments would want this money and the Receiver of Taxes would make contributions towards them; is that right?

A No -- I think a better example would be to the school districts.

Q Or to the school districts, whoever made a demand on them.

A Yes.

Q Now, you told us about what demand deposits are and they fluctuate from day to day; isn't that correct?

A Yes.

Q Now, let us drop that for a minute, let us talk about time deposits.

As I recall what you told us yesterday was that a time deposit was a deposit which had to stay in the bank for some specified period of time; isn't that right?

A Yes.

Q It is almost like I were to come to you and I would say to you, Mr. Hart, I will make a contract with you, you pay me seven per cent on my money and I will agree to leave my money on deposit in your bank for 90 days and I won't touch the money.

A Yes, sir, that is essentially it, it was a contract, it is at a fixed rate of interest.

Q The bank then on time deposits would issue a paper that some banks I think call a certificate of deposit?

A A time certificate of deposit.

Q A time certificate of deposit.

And the time that the money stayed in these accounts would vary, depending upon the particular agreements that you would make with your customers; is that correct?

A Yes.

Q Now, the bank paid interest on these accounts?

A Yes, they did.

Q Isn't it a fact, Mr. Hart, that the different banks competed for these time accounts by competing on the interest that they were paying?

A That is partially true.

Q Partially true?

A Yes, partially true.

Q Okay.

But that was involved in setting up these accounts, in other words if the Security National Bank was paying seven per cent and the Franklin National was paying seven and one eighth, you and I as ordinary lay people would probably put our money in the Franklin National; isn't that right?

A Yes, in most cases.

Q And fiscal officers were just as wise as you and I are in this particular area, isn't that right, they would still want to get the most for their money?

A Under certain circumstances, yes.

Q Now -- all right.

So now we have defined time deposits and we have defined demand deposits.

Now take a look at your schedule -- incidentally did the bank generally -- well, you mentioned that all of this was public information which you were talking about; right?

A Yes.

Q Now, when a bank made a profit on its time deposit accounts and demand deposit accounts, did you publish how much profit it made for each one of these accounts?

A No, all of this is internal information, this was never disclosed outside the bank.

You are talking about internal information?

Q Yes.

A This is confidential information.

Q Why was it confidential?

A You mean the earnings?

Q Yes.

A It has been.

Q Well, you didn't want the Franklin National Bank to know how much you were making on a particular school district account; isn't that right?

A No, I wouldn't say you would.

Q You wouldn't.

A No.

Q Isn't that the reason why you put the word "confidential" on top of your reports, because you wanted this

to remain within the Security National Bank, you didn't want the Franklin National Bank, for example, to know how much the profit was that you made on the deposits of the incorporated village of Amityville, as you have indicated on the first line of this page.

A Yes, it was marked "confidential."

Q It wasn't marked "confidential" because you thought that there was any illegality about this paper, was it?

A No, it was marked confidential just within the bank.

Q It was marked confidential just within the bank for the bank's business reasons, right?

A Right.

Q The same way that a corporation would have trade secrets or business secrets which they wouldn't want another corporation to know about; is that right?

A Yes.

Q For the same reason?

A All right.

Q Now, let me go down -- as I understand it you have set up two columns for demand deposits, you have 1972 and 1973 accounts; is that right?

A Yes.

Q And then you show a net profit or a net loss

which the bank realized from these accounts; is that correct?

A Yes.

Q And then you show time deposits; is that correct?

A Yes, sir.

Q Is it fair to say, Mr. Hart, that the net profits and the net losses that you computed on this exhibit relate only to the demand deposits and do not relate to the time deposits?

A They relate only to the demand deposits.

Q They relate only to the demand deposits.

Thank you.

Just so the jury can understand what type of municipal deposits were attracted to the Security National Bank -- withdrawn.

Would you as a calling officer call upon the various organizations that you listed on this exhibit?

A Well, not all of them, no, I would call on some of them.

Q On some of them; is that correct?

A Yes.

Q All right.

Now let me ask you this:

For example, you have listed here under town of Babylon, well, you have three incorporated villages, three

fire districts and a water district; is that correct?

A Yes.

Q Let me ask you this:

As far as you know -- withdrawn.

Do you reside in Long Island?

A Yes, in Merrick.

Q In Merrick, all right.

You are familiar with incorporated villages generally in Long Island?

A Yes.

Q As far as you know, incorporated villages are separate and distinct self governing bodies; isn't that correct?

A Yes, they are.

Q For example, the incorporated village of Amityville has its own government?

A Yes.

(Continued on next page)

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Q It could be embraced geographically within the town of Babylon; is that correct?

A Yes, sir.

Q But it is a sepa ate government and it has its own separate agencies, it is a separate incorporated village; is that correct?

A Yes, it is.

Q As a matter of fact the people vote in the Village of Amityville for their local government; isn't that right?

A Yes.

Q It has its own separate fiscal offices; is that correct?

A Yes.

Q All right.

And that would be true of the Village of Babylon, the Village of Lindenhurst as well?

A Yes.

Q And of each of these villages, they are made up of separate autonomous local people elected by the local citizens; isn't that correct?

A Yes.

Q As a matter of fact -- well, are you, are you familiar with the fact that in Amityville and Babylon and

Lindenhurst that when people run for the mayor or run for the village council, they don't run as Democrats or Republicans; isn't that correct -- they usually have local party organizations?

A I am not too familiar with that.

Q Let us take the incorporated village of Freeport; are you familiar with that?

A Yes.

Q In the incorporated village of Freeport Democrats and Republicans don't run for office, they have their own local Freeport political parties?

A They have their own nomenclature.

Q Yes, they have their own nomenclature; isn't that correct?

A Yes.

Q Now, let us talk about fire districts.

What is a fire district, Mr. Hart?

A Well, it's what its name implies, it is a separate form of organization that was set up for the protection of the citizens in their own communities as far as fire protection is concerned, and I guess it is supported by taxes and so forth.

Q All right.

Now let me stop you there for a minute.

First would you say that generally in Long Island there is no municipal fire department like they have in New York City, the fire department in New York City?

A Yes, I think the villages have their own fire departments but the others have fire districts, I guess.

Q And the firemen who serve their community in these fire districts, they are all volunteers and are not paid generally; isn't that correct?

A Yes, it is my understanding that they are volunteers.

Q These are just civic minded local citizens who volunteer their time and risk their lives and their bodies for their neighbors; isn't that what happens?

A Yes, it is a volunteer type.

Q And they fight fires but don't get paid for it; is that right?

A I guess they don't, yes, I don't know this, I am not telling you that I know, I don't know.

Q But yet these firemen, these volunteer firemen, they have trucks and equipment that are purchased through tax money?

A Yes.

Q That is contributed by local property owners; isn't that correct?

A Yes.

Q Now each of these fire departments also have commissioners; isn't that correct?

A Yes.

Q And they also are elected by the local people?

A Yes.

Q And they don't run as Democrats or Republicans to become a fire commissioner do they?

A I don't know.

Q As a matter of fact most of them just run by name, they have no political affiliation; isn't that correct?

MR. PATTISON: Your Honor, the witness has said that he has no idea about this, Mr. Cohn is really testifying.

THE COURT: Yes.

I would think at this time you are making statements and not asking questions.

BY MR. COHN:

Q You come from Merrick; is that correct?

A Yes.

Q Merrick has its own local fire department?

A We have a fire district.

Q Did you ever vote locally for the Merrick fire commissioner?

A I don't recall ever voting for a fire commissioner in Merrick, to be very honest with you, I don't know if he is elected or not.

I have to plead ignorance.

Q How about a water department, would it be fair to say, Mr. Hart, that in Long Island people do not get water the way people get it in the city of New York?

A Yes, there are quite a variety of forms, they have water corporations, in Merrick we have a private water corporation, but there are water districts.

Q There are water districts and people also vote for the district commissioner for the water district; isn't that right?

A That I don't know either, you are telling me.

Q Then I will pass that by, all right?

Now for the Town of Babylon, which is a geographical area, you listed on your form that within that Town of Babylon geographic area -- well, you had one water district, three fire districts and three villages that had municipal accounts at the Security National Bank; is that correct?

A Yes, that is correct.

Q Let us go down to the Town of Brookhaven.

Would you agree with me that you list three

villages --

A Yes, correct.

Q And you list one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen -- fourteen separate and distinct fire districts in the Town of Brookhaven on the first page; is that correct?

A Now the total there, well, I want to distinguish where it says Town of Babylon and it gives a figure, that is --

Q I am not at the figures right now, I just want you to bear with me, Mr. Hart, because if we take it slowly we can all understand it.

Okay?

A There are quite a number of districts.

Q So I have mentioned correctly all the fire districts, and as a matter of fact if we go onto the next page then in the Town of East Hampton you had two villages and one fire district?

A That is correct.

Q And you have the figures comprising the deposits of the Town of East Hampton?

A No, that is the Town of East Hampton's total, it has entirely separate deposits, those deposits are for the township only, they are entirely separated from what we

had on deposit from the villages.

Q In other words you had monies from the town and in addition to that you also had monies from many other separate entities?

A Yes.

Q I am sorry, I didn't understand you, I apologize.

A It is not the total of the whole thing.

Q So that on your chart you listed the deposits in the Town of East Hampton, the deposits of the Village of East Hampton, the deposits of the Village of Sag Harbor and the Amagansett fire district.

Have I read it correctly?

A But the total under the line of the Town of Brookhaven was strictly for town accounts, it has nothing to do with villages.

Q I think you have made that plain to us and I thank you for calling that to our attention.

Then you go on to the Town of Hempstead and now we are moving into Nassau County.

Now would you look on page 2 of that exhibit, and there we have one, two, three, four -- five, we have five villages listed; right?

A Yes.

Q Those are East Rockaway, Freeport, Hempstead,

Island Park and Lawrence.

A Yes.

Q Now, you have two fire districts three -- five -- five fire districts, right?

A I guess so, they add up to five.

Q Then you also have a water district?

A Yes.

Q Now, we have a new kind of an agency that shows up, the Freeport Urban Renewal Agency, and you list that as a municipal account?

A Of course.

Q And then you also have the Hempstead Housing Authority, and you listed that as a municipal account?

A Yes, it is.

Q Now, that would be true of the rest of your accounts on this page, in other words without going into each one of these, is it fair to say that you list towns, you list cities, you list villages, you list fire districts, you list water districts, you list housing authorities, you list urban and renewal agencies; is th correct?

A Yes.

(continued next page)

GR

BY MR. COHN:

Q All right.

Now, let me take you down to the last page, if I may, of the exhibit where you total all of the -- may I find it for you, sir, Mr. Hart?

I think we'd save some time here.

May I please invite your attention to the last page?

A The totals, yes.

Q Would you bear with me now, sir, and work with me on this page? Is that correct?

Now, on the bottom line of that page you listed the totals of all of the demand and time deposits of all these agencies that I have read out for you; is that correct?

A Yes.

Q Some of which were your customers, some of which were your prospects; is that correct?

A No. They're all customers on this page.

Q They're all your customers, fine.

Now, in -- let's take 1973 first, the total of the demand deposits in 1973 on the date indicated in your report was $48,000,676 -- sorry -- $48,676,156; have I read it correctly?

A Right. Correct.

Q All right. And these you say were the lucrative accounts; is that right?

A Yes.

Q Would you read to the Jury what the non-lucrative or time deposit accounts were that you've listed for that year on this exhibit?

A I'd like to qualify that.

Q No. Just read the figure that you have there.

MR. KATZBERG: Objection, your Honor.

If the witness has something to explain --

THE COURT: Just a moment.

THE WITNESS: Not the figure for non-lucrative accounts. I want to make that distinction.

Q In other words, the time deposits were also lucrative accounts?

A The bank made money on them generally, yes.

Q They paid interest on those accounts?

A But they still made money on them.

Q They still made money. Thank you for clearing that up for us.

A They still made money on it.

Q Would you read to me the amount of these

deposits that were on deposit at that time?

A $239,892,959.

Q So in the time deposits they had only $48,000,000 but on the accounts that they had to pay interest -- so the municipalities they had $239,000,000; is that right?

And would you agree with me, Mr. Hart, that they had roughly five times the amount of time deposits that they had to pay interest on as compared to the demand deposits that they didn't pay interest on?

A That's correct.

Q Now, you also figured the profitability, did you not?

A Yes.

Q Of the demand accounts; is that correct?

A Yes.

Q And what do you show for 1973 was your computation of the profit that was only from the demand accounts and not from the time accounts?

A $940,000 approximately.

Q Approximately $940,000; is that correct?

A Yes.

Q All right.

Now, Mr. Hart, would you do me a favor and

would you leave this exhibit alone temporarily and take the next half of the exhibit? That's the one that is listed as school accounts.

Is that correct?

A School districts, yes.

Q All right.

This was -- now, I am not -- here again, this was marked confidential, not because of any fear of illegality. You just didn't want your competitors to know how much you aade on these accounts; isn't that right?

A Yes.

Q Here again, you've listed under the various towns the different school districts that made these deposits; is that correct?

A Yes.

Q Let me talk to you for a minute about a school district.

You know in the City of New York, there is one central public school system; is that correct?

A Yes.

Q We don't have that in Long Island; isn't that right?

A Right.

Q For some reason that I don't think you or I will ever understand, the communities have been divided up into small areas; isn't that right?

A Yes.

Q And each one of these areas has its own separate independent school district?

A Yes.

Q You live in Merrick, do you not?

A Yes.

Q You pay two taxes, do you not? You pay a town tax to the Town of Hempstead and you also pay a school tax to the particular separate school district that covers your area?

MR. PATTISON: Your Honor, may I object at this point?

This is leading and it is not really cross.

Mr. Hart --

MR. COHN: This is the Government's exhibit, Judge.

THE COURT: Just a moment.

There is --

MR. PATTISON: But this aspect of it, your Honor, is --

THE COURT: Well, I think that once an exhibit

is in evidence, the entire exhibit can be examined.

MR. PATTISON: Nothing on there says where he pays taxes or to whom or --

MR. COHN: No.

THE COURT: As to any relative issue that might be in the case.

MR. COHN: May I say this --

THE COURT: I will listen a little further and if I find it is not relevant, I will strike it.

MR. COHN: Just -- respectfully, Judge, I'm just trying to explain to the Jury just --

THE COURT: You don't have to.

MR. NAFTALIS: You won. You won.

THE COURT: I'll decide whether it is so or not.

Ask your next question.

The Jury knows what you are trying to do. We know. That makes 16 of us that know.

MR. COHN: Thank you, your Honor. I apologize to the Court.

THE COURT: Okay.

fls. (Continued on next page.)

CROSS-EXAMINATION

BY MR. COHN: (Cont'd.)

Q Now, Mr. Hart, in the town of Babylon, for example --

THE COURT: Seventeen?

Q That's the first column that you have on your sheet, will you look at that, sir?

A Yes.

Q Will you agree with me, sir, in that town alone there are nine separate school districts, isn't that right?

A Correct.

Q Each separate school district had its own separate bank accounts, isn't that right?

A Yes.

Q All right. Now, do you know who -- withdrawn. Would you agree with me, sir, that each school district elects its own school board, isn't that right?

A Yes.

Q Each school board then determines where they are going to deposit their monies, isn't that right?

A That's correct.

Q All right. And as a matter of fact, when people run for a school board in Nassau or Suffolk County,

they don't run as democrats or republicans, they run under their individual names?

A Yes, they do.

Q Okay. Thank you. Then they also have a Babylon public library, isn't that right?

A Yes.

Q That's also a separate organization, isn't it?

A Yes.

Q They have a library board that also runs for election under their own names, not as republicans or democrats?

A Yes.

Q And would you also say that it is true for the North Babylon public library?

A Yes.

Q So that here in Babylon you have eleven separate bank accounts, all contributed to the Security National Bank by eleven separate governing agencies, isn't that right, if you can use that term to describe a school board?

A Yes.

Q All right. Let's take the town of Brookhaven, would you agree with me, sir, that there is one, two,

three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen separate school districts that deposited into the Security National Bank for the town of Brookhaven?

A Yes.

Q And in addition to that, they had one, two -- and two public libraries?

A Correct.

Q And that's true for all of the -- I am not going to go through each one of these but that would be true for all of these separate agencies, that's true for the town of Hempstead, the town of Huntington, Islip, Long Beach, North Hempstead and everything else you've listed here?

A Right.

Q Right. Would you agree with me, sir, that you probably have over a hundred separate school boards and library boards listed on this exhibit? Approximately?

A Yes. I wouldn't be surprised. There are a lot of them.

Q All right. Everyone of these is a separate elected board, elected by the people residing in that community?

A Yes.

Q None of whom run as democrats or republicans?

A No.

Q All right. Let me take you to your last page again, again, Mr. Hart, to save time may I be kind enough to show it to you, sir? Will you look at the last page?

A Yes.

Q All right. You did the same thing at the bottom of this page as you did for the bottom of the page with regard to the municipalities, isn't that right?

A Yes.

Q And now let me ask you, sir, is it not a fact that in 1973, the demand deposits from all of these libraries and school boards came to $17,443,789?

A Right.

Q And yet, the time deposits against that seventeen million dollar figure, the time deposits where the bank had to pay interest, they had $16,286,000 rounded out, is that correct?

A That's correct.

Q All right. Now, Mr. Hart, will you also look at your column for the profit for the time -- sorry, for the demand deposits alone?

A Right.

Q And in 1973, on the demand deposits, exclusive of the time deposits, they made a profit of $443,544.87, is that correct?

A That's correct.

Q And that was for the period covered in your report, in 1973?

A Correct.

Q All right. Now, Mr. Hart, --

MR. COHN: Your Honor, can I have him get a paper and pencil, please?

THE COURT: We will take a recess now. Then we will come out with paper and pencil.

MR. COHN: Okay.

THE COURT: All right. Take a five minute recess.

(Recess taken)

(Continued on next page.)

THE COURT: All right. Seat the Jury, please.

(Jury present.)

THE COURT: All right. Ready to start?

MR. COHN: I have only one final question to put to you with regard to that exhibit you have.

THE WITNESS: Yes.

MR. COHN: Your Honor, may I have the witness furnished with a paper and pencil, please?

THE COURT: Yes.

MR. COHN: May I give this to the witness?

THE COURT: Yes.

BY MR. COHN:

Q Mr. Hart, will you -- I'm sorry.

MR. COHN: May I proceed, your Honor?

THE COURT: Yes.

Q Mr. Hart, will you just do some addition for me, please?

Take the 1972 profit from the time deposit that you show on your last page with respect to municipal accounts.

Will you put that down on a piece of paper.

A Profit on demand deposits?

Q I'm sorry. Demand deposits, yes.

A 1972?

Q Yes.

That's $994,765.52.

A All right.

Q Will you add to that the 1972 profit on the demand deposit on the last page of the school accounts?

A School accounts. The 1972?

Q Yes. $542,609.59.

A All right.

Q Will you add it together, please, Mr. Hart?

A Yes. It's $1,537,375.11

Q That's roughly a million and a half dollars; right?

A Right.

Q All right.

Will you do the same thing for '73, please, and then we will be finished with this.

A All right. I get $1,383.912.28.

Q Roughly a million four, averaging it out, a million four hundred thousand dollars?

A Yes.

Q Okay.

Now, Mr. Hart, do you know whether or not a bank ever made a profitability survey on the combined profit that they made for municipal time and demand deposits

for any particular year?

A Combined? For time and demand?

Q Yes.

A I don't think it was too feasible on time deposits.

MR. COHN: Your Honor, may I have this marked for identification, please?

THE COURT: Yes.

MR. COHN: Thank you.

THE CLERK: Two-page document marked for identification as Defendants' Exhibit A.

(So marked.)

BY MR. COHEN:

Q Mr. Hart, this document was not prepared by you but I'm going to ask you to look at it and tell me if you can recognize it and tell me what it is.

Will you look at it, please?

A Yes. This is a memorandum from Charles Humphrey, who at that time was vice-president of the bank, to David Dowd, dated March 6, '72, "Municipal Account Profit Table."

Q Will you look at the next page, sir.

Do you recognize that?

A Yes. It says: Municipal Account Profitability.

for 1971.

Q Right. And would you look at the first sheet, the yellow sheet, sir, and on the routing list; a copy of that sent to you, sir?

A Yes.

Q Will you agree with me, sir, that that is a record maintained by the Security National Bank in the regular course of its business?

A Yes. This was a legitimate inter-office memorandum, copy sent, yes.

MR. COHN: I ask that it be marked in evidence, your Honor.

MR. KATZBERG: No objection at all.

THE COURT: Mark it.

THE CLERK: Defendants' Exhibit A received in evidence.

(So marked.)

BY MR. COHN:

Q Mr. Hart, I have a copy of this and I would like to ask you, sir, does this -- look at the white sheet, sir, will you please?

A You mean the sheet underneath?

Q Yes, sir.

A Yes, right.

Q It's titled: Municipal Account Profitability 1971; is that correct?

A Yes.

Q It shows the income and it shows the expenses; is that correct?

A Yes. Correct.

Q And it shows -- a gross income of $49.1 million from demand deposits; is that correct?

A Yes.

Q And it shows a gross income of $35.1 million from savings accounts?

A Yes.

Q And -- I'm sorry. That's not millions. Withdrawn.

May I just check this again to make sure I'm reading it right?

A It doesn't state --

THE COURT: Wait. There is no question.

Q Mr. Hart, it says 49.1; is that correct?

A Yes.

Q All right. Then on savings account it says 35.1?

A That's correct.

Q By the way, you did have municipal accounts

that opened up savings accounts with the bank; is that correct?

A Yes, some of them -- the school districts only. I think.

Q All right. Then you also had certain accounts of deposit, that was the time accounts you told us about?

A Yes. The time accounts.

Q That's two -- 225.9; is that right?

A Yes.

Q All right. A total of 310.1; right?

A That's correct.

Q All right.

Now, look at th e right-hand side. It showed the expenses that were paid against this by the bank?

A Yes.

Q And do you see that they paid out in interest $13,000,616.57?

A Yes. That's correct.

Q The total expense to the bank in maintaining these municipal deposits was $14,375,386?

A That's correct.

Q All right?

Now, look below the line. Will you look at the figure that says: Total income?

A Yes.

Q In the first column.

A Yes.

Q Read to the Jury what the total income was from these accounts?

A Let's see. It says: Funds available for investment, $6,791,020; Municipal loan income tax adjustment, thirteen million nine hundred eighty-four thousand three hundred --

Q What's the total income?

A Total income, it says here, $20,775,345.

Q And then it has less total expenses; is that correct?

A Less total.

Q That's the $14,000,000 figure I read which included part of the interst of thirteen million?

A Right.

Q Will you read to the Jury what the gross income was in '61?

A $6,399,959.

MR. COHN: Thank you.

MR. KATZBERG: You mean, '71?

MR. COHN: '71.

THE WITNESS: For the year of '71.

MR. COHN: That is $6,000,399 -- $6,399,959; right?

THE WITNESS: That's the gross income.

Q That's right.

A Gross.

Q Right. And what do you deduct from that?

A Adjusted for taxes at five -- at 51.85 per cent. $3,318,379.

Q What's the net profit after taxes?

A Net profit of $3,081,580.

Q After taxes?

A I don't know that.

Q Okay.

A That I don't know.

Q Mr. Hart, let me take you to another exhibit.

Will you look at this, sir? I'm referring now, your Honor, to Government Exhibit 57.

That document is entitled: Long Island Bankers Association, Inc., Public Deposits; is that correct?

A Yes, correct.

Q And I think Mr. Katzberg questioned you about it on your direct examination, and this, I believe, you told us came from a public record; is that correct?

A Yes. This is a public record put out by the

Long Island Bankers Association.

Q All right.

It relates to banks doing business in Long Island; is that correct?

A Yes.

Q And only banks doing business in Long Island are listed on this sheet; isn't that right?

A That's correct.

Q And it listed all of the public deposits held by these banks in 1972; right?

A Yes.

Q From 12/31/71, to 12/31/72?

A That's correct.

Q Would you agree with me, Mr. Hart, they were 28 banks in Long Island that held municipal deposits?

A That's correct.

Q One of which was the Security National Bank?

A That's correct.

Q And they also -- I think Mr. Katzberg had you point out that the Security National Bank increased its public deposits by 25 per cent from 1971 to 1972; is that correct?

A Yes, that's the figure on here.

Q As a matter of fact, there were two asterisks

placed after the Security National Bank, isn't that so?

A Yes.

Q And if you look at the bottom, they refer to the fact that the Security National Bank acquired another bank in 1972, on May 5, 1972?

A Yes. On May 5th of '72.

Q Is that correct, sir?

A Yes.

Q The Royal National Bank?

A Yes.

Q And this figure of 19 -- in 1972 included -- reflects the 25 per cent increase includes the public deposits held by the Security National Bank and as increased by the acquisition from the Royal National Bank; isn't that correct?

A Yes.

Q Now, they have a combined figure.

Q Yes.

Q All right.

That is the 25 per cent increase; is that correct?

A Including that, yes.

Q Yes. All right.

Did some of the other banks increase their

public deposits during this time?

A Percentages of course -- yes, they always -- take a small bank --

Q Let's take the Bank of Smithtown.

How much of an increase was their percentage?

A 81.6 per cent.

Q And the Chemical Bank of Suffolk, that was the Long Island branch of the Chemical National -- the Chemical Bank; isn't that right?

A Yes.

Q What was the percentage of their increase in the same period?

A Increased 147.3.

Q 147.3 per cent.

Let's go down to the Long Island Trust Company. That is the one you said was one of your competitors; isn't that right?

A Yes.

Q What was the percentage of increase of their public deposits in this year?

A 77.3 per cent.

Q Compared securities 25 per cent?

Let's take the Marine Midland Tinker National Bank. What was the percentage of their increase?

A 154.5 per cent.

Q 154.5 per cent.

And let's take a look at the Oysterman's Bank & Trust Company. What was the percentage of their increase?

A 181.7 per cent.

Q 181.7 per cent.

And the Suffolk County National Bank, what was the per cent of their increase?

A 109.3 per cent.

MR. COHN: Thank you.

May I have these exhibits, please?

Q I'll just -- I'm not going to question you about these any more, so I won't disconcert you.

MR. KATZBERG: May I have that back?

MR. COHN: Yes, you can have them back.

Q Mr. -- you testified about a thousand dollar check that you made.

Whom did you make the check to?

A I believe it was the Nassau County Republican Committee or Nassau County Victory Journal or something like that.

Q It was made out to a journal, was it not?

A Yes. A Victory Journal.

Q All right. And in this journal, was there not an advertisement placed in the journal by the Security National Bank, if you know?

A I don't think it was under the name of Security National Bank.

Q Was it under the name of Pat Clifford and Herman Mause?

A Something like that.

Q So that they -- the thousand dollars represented an advertisement that was placed in a journal that was distributed in Nassau County; isn't that correct?

A Yes. I believe though it had to do with a dinner of some sort, too, as I remember.

I can't recall now.

Q It was distributed at a dinner; is that correct?

A I believe it was, yes.

Q And other banks also advertised in that journal?

A That, I don't know.

Q You don't know?

Let me show you another journal --

MR. COHN: May I have this marked for identification, your Honor.

THE CLERK: Several-page document marked for identification as Defendants' Exhibit B.

(So marked.)

BY MR. COHN:

Q Do you recognize this journal, sir?

A I believe it is the first time I've seen it but I can't be sure.

It's a journal of the Town of Oyster Bay Republican Committee Annual Year Book, it says here.

MR. KATZBERG: Your Honor, if the witness can't identify the document as something he knows about, then there is no reason to proceed any further.

THE COURT: He can lay some questions for a foundation.

THE WITNESS: I don't believe I've see it before.

MR. KATZBERG: The witness said he has never seen it before, your Honor.

MR. COHN: All right. I'll drop it.

THE COURT: You don't re;cognize it?

THE WITNESS: No, I don't recognize that particular journal.

THE COURT: Okay. He does not. The first

he's ever seen it.

MR. COHN: I just have a few more questions, Mr. Hart, and then I'll leave you.

Q You mentioned in your direct examination that at the very inception of your contributing to Betty Jaeger, you gave cash to her; is that correct?

A Yes.

Q As a matter of fact, you and Betty Jaeger were in the same bank, were you not?

A In the same building, yes.

Q The same building.

Didn't you do that because it was more convenient for you to give her the cash than to write the check?

A No. I was instructed to do it that way.

Q Didn't you testify in your Grand Jury that it was more convenient for you?

A It was also more convenient, of course.

Q Thank you.

Do you recall offhand how many checks you wrote to the Betty Jaeger account?

A Not offhand. I'd have to count them. I don't know. 10, 20. Something like that.

Q Do you -- you told us you are a resident of

Nassau County.

I call to your attention, sir, that there are two counts in this indictment, one relating to a contribution to -- relating to Judge Bernard Meyer and one relating to a testimonial dinner forJudge Sol Wachtler.

Have you heard of these two gentlemen?

A Yes. Judge Meyer is, of course, well known. So is Sol Wachtler, of course.

Q And did you know that Judge Meyer was in 1972, when he was running for the office of Judge of the Court of Appeals of the State of New York, that he was then a sitting Supreme Court judge in the State of New York?

A I don't know that, but if you say it is true --

Q Would you know or do you know that Judge Sol Wachtler, when he was running for officer, was also a sitting Supreme Court Judge of Nassau County?

A Yes, but he was -- prior to that, wasn't he the supervisor of --

Q Ye ran and he lost.

A Anyway, he was running for some political office. I don't recall.

Q He then became a Supreme Court Judge?

A I believe he was running as a judge.

Q Let me ask you this, sir:

Did anybody at the bank ever attempt to influence you as to whether you should vote for Sol Wachtler or for Bernard Meyer?

A No.

Q Did David Dowd ever come to you and say to you, "I'm interest in getting Judge Meyer and Sol Wachtler elected, I want you to vote for them"?

A No.

(Continued on next page.)

F fols.

CROSS-EXAMINATION

BY MR. COHN: (Cont's.)

Q Did Pat Clifford or Frank Powell ever do this?

A No.

Q And did you ever recall ever seeing any posters at the bank asking the bank customers to vote for Sol Wachtler or Judge Meyer?

A No.

Q Did you ever see any political poster of any kind placed anywheres in any branch office of the Security National Bank advocating the election of any candidate?

A I personally did not, no.

Q All right. You came to the bank every day, is that correct?

A Yes.

Q And in all the time that you worked in that bank and you came to the bank you never saw such a political poster, did you?

A No.

MR. COHN: May I have just a minute, your Honor?

THE COURT: Surely.

MR. COHN: No further questions, your Honor

THE COURT: Anyone else?

MR. NAFTALIS: Mr. Clifford has no questions, your Honor.

THE COURT: All right.

Mr. Bannigan?

MR. BANNIGAN: One moment, if your Honor please.

MR. COHN: May I just ask one question? Never mind.

MR. BANNIGAN: No questions, your Honor.

MR. KATZBERG: I just have one question on redirect, your Honor.

REDIRECT EXAMINATION
BY MR. KATZBERG:

Q With reference to Exhibit No. 57, the Long Island Bankers' Association's public deposits and the percentages of increases, Mr. Cohn asked you about a number of oth r banks and their percentages, isn't that correct?

A Yes.

Q How would you compare the size of those banks to the size of the Security National Bank?

Q It's the size of the public deposits of Security National Bank in the instances that he was comparing

them with substantially greater than these much smaller banks and --

Q So, a much lesser figure of money in addition would be a much larger percentage of increase?

THE COURT: You must let him finish the question.

A As I said, I took a course in statistics in college at Columbia University so I'm very well acquainted with the use of statistics. It can be very misleading to show a percentage increase but when you are working with much smaller figures as compared with one where you are dealing in larger figures -- the true comparison in a case like that is the dollar amount of the increases, not the percentage increases. I think those statistics will bear that out.

Q Now, you indicated on cross-examination that you went to a number of political dinners, is that correct, sir?

A Yes, sir.

Q Sometimes as much as two or three times a week, is that correct, sir?

A Yes, sir.

Q Can you recall on the average how much money each ticket cost for those dinners?

A On the average?

There were -- they never came cheap. Around 50, $100.

Q For each ticket?

A Sometimes higher, yes.

Q For your 50 or $100 and these dinners that you went to, what did you get, sir?

THE COURT: What do you mean, what kind of meal?

MR. KATZBERG: Yes.

THE COURT: I'll take judicial notice, the worst meal in the whole world. Absolutely. That's one area I'm an expert in. Absolutely.

All right.

MR. KATZBERG: I think we've established that point. Thank you, Judge.

THE COURT: I think we all know that.

THE WITNESS: It's true. I got a rubber chicken most times.

BY MR. KATZBERG:

Q A hundred dollars, is that correct, sir?

A Yes.

Q Now, by the way, who paid for these tickets? For these dinners at $100 a shot that you went to two

and three times a wee sir?

A I personally never paid for them, of course. These came from the things we've been describing, these political contributions, the checks.

Q Thank you, sir. Now, one more line of inquiry and that's all I have, your Honor.

Mr. Cohn questioned you about contributions -- withdrawn. Mr. Cohn questioned you about various types of accounts on which the bankpays no interest, is that correct, sir?

A Yes.

Q And he indicated that the Receiver of Taxes for the various municipalities controlled such accounts, is that correct, sir?

A Yes.

Q And these accounts were interest-free accounts, is that correct, sir?

A Yes.

Q Do you know a man by the name of Robert Livingston, Jr., sir?

A Yes. I believe he still is Receiver of Taxes for the town of Hempstead.

Q I want to show you part of -- for the record Exhibit 59, a check which you indicated you drew as per

Mr. Chadwick's instructions dated September 8th, is it '71? Would you tell me to whom that contribution check is drawn?

A Yes. The Committee for Election of R.D. Livingston Jr. in the amount of $500, dated September 8, 1971.

Q Could you please read to the jury the endorsement on the back of that check?

A For deposit, Committee to Elect Robert D. Livingston, Jr., signed Gerard R. Dieffenbach.

Q There is nothing on here about a clambake or anything else, is there, sir?

A No.

Q Flat out contributions, isn't that correct, sir?

A Yes.

MR. KATZBERG: May I have this shown to the jury, your Honor?

MR. COHN: May I see that for a minute, please, your Honor?

MR. KATZBERG: Yes. This is part of Exhibit 59.

BY MR. KATZBERG:

Q This check -- one last question.

MR. NAFTALIS: What number was that again?

MR. KATZBERG: Exhibit 59.

Q This was part of the contributions that you have discussed to us, that you made, is that correct?

A Yes. That Arthur Chadwick requested.

MR. COHN: If your Honor pleases, will you please refresh my recollection? Whom did he identify this gentleman as?

THE WITNESS: Mr. Livingston?

THE COURT: Yes.

THE WITNESS: He's -- as far as I know, he still is the Receiver of Taxes of the town of Hempstead.

MR. COHN: Thank you.

BY MR. KATZBERG:

Q He controls that demand account, is that correct, sir?

A Yes, that's correct.

MR. KATZBERG: I have nothing further at this time, your Honor.

MR. BANNIGAN: I have a few questions, your Honor, if I may.

THE COURT: Yes.

MR. BANNIGAN: May I inquire from here?

THE COURT: I suggest you wait until they have looked at the check.

MR. BANNIGAN: Oh, I'm sorry.

THE COURT: You will get to see them more completely eventually so just take a fast lock at it.

THE WITNESS: Here is the pencil.

THE COURT: We need those. They are starting to complain.

All right.

MR. BANNIGAN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. BANNIGAN:

Q Mr. Hart, my name is Eugene Bannigan. I represent the Security National Bank and you see nobody here. I just have a few questions. On redirect examination you were asked by Mr. Katzberg the approximate price of the dinner tickets and I think you said it was 50 to $100, is that correct?

A Yes. I think there -- average somewhere in that area. Say $100. Something like that.

Q And funds used to acquire these tickets came from what we call club members, is that correct?

A Yes. I believe that was the --

Q Thank you. When you went to these dinners, I think you earlier testified that many people who held positions equal to yours in other banks were also to dinners, is that correct?

A Yes. I wouldn't say many but there were some, yes. That I recognized.

Q People that you saw frequently at all of these dinners who were from other banks?

A Yes.

Q Some of these people you knew personally?

A Yes. We were bankers.

Q Do you know, sir, whether any of these other people were independently wealthy?

MR. KATZBERG: Objection.

MR. BANNIGAN: To his knowledge.

THE COURT: It's kind of speculative.

MR. BANNIGAN: To his knowledge.

Q Do you know, sir?

THE COURT: We don't know whom we are talking about.

A Very few, if any.

Q Very few, if any. Thank you very much, sir.

THE COURT: All right.

You may step down.

MR. KATZBERG: I have one question. With regard to that.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q Do you know who paid for their tickets, sir?

A Do I know who paid for them?

Q Yes. For the other bankers, do you have any idea who paid for their tickets?

A I would only speculate.

MR. BANNIGAN: We'll take his speculation.

Q Do you know for a fact who paid for their tickets?

A In the other banks?

Q Ye .

A No.

MR. KATZBERG: Thank you.

THE COURT: All right.

You may step down.

MR. KATZBERG: The Government -- may I proceed with the next witness, your Honor?

THE COURT: Yes.

MR. BANNIGAN: I'd ask for his speculation, your Honor. I have no objection to his testifying to his speculation.

MR. RYAN: I object.

THE COURT: No. Let the jury draw any inference they see fit.

All right. It's the jury's duty. They cannot speculate.

MR. KATZBERG: Your Honor, at this time the Government calls William Sly.

THE CLERK: Please stand over here and raise your right hand.

W I L L I A M G. S L Y , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Sly, in a loud clear voice, sir, so that every member of the jury can clearly hear you, would you tell us by whom you are presently employed?

A The Chemical Bank.

Q What is your occupation with the Chemical Bank?

A Vice president.

Q And for how long have you been a vice president at the Chemical Bank?

A A little over a year.

Q And when did you first become employed by

Chemical?

A January of 1975, when Chemical took over the Security National Bank.

JB fls.

(Continued on next page.)

:BD 4am

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Q Now, prior to that takeover date, sir, you were employed by the Security National Bank?

A Yes sir.

Q When did you start working for the Security National Bank?

A September of 1967.

Q What was your title at that time?

A Vice-president.

Q Did you continuously work for the Security National Bank from 1967 until the date of the acquisition in 1975?

A Yes sir.

Q Now, I want to direct your attention, Mr. Sly, to your specific duties at the bank. Would you tell the ladies and gentlemen of the jury what your function was at the SEcurity National Bank?

A Well, was a number of functions. Originally I was a commercial lending officer operating out of the bank's main office in Huntington.

Q And thereafter?

A I was a branch manager.

Q Which branch, sir?

A First, at Carle's Place office when it was opened in 1968. And then in charge of the bank's Great Neck

office from March 1971.

Q Now, Mr. Sly, I want to direct your attention to the end of the year of 1967. What was your title at that time in the Security National Bank?

A Vice-president.

Q And where were you working physically in 1967?

A In Huntington.

Q To whom did you report at that time?

A Mr. Robert Bradley.

Q What was Mr. Bradley's title?

A I believe he was a senior vice president.

Q Who did he report to?

A Mr. Clifford.

Q Who was the president; is that correct?

A Right.

Q Now, again referring to the specific period of time, late 1967, did there come a time when you had a conversation with someone with respect to political contributions?

A Yes.

Q Who did you have this conversation with?

A Mr. Powell.

Q Now, what was Mr. Powell's title at that time?

A Executive vice president.

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Q Was he in a superior or inferior position to you at that time?

A Superior.

Q Now, who initiated this conversation? Yourself, sir, or Mr. Powell?

A I am sorry. What --

MR. RYAN: May we have the time and place?

MR. KATZBERG: We have established the time as late 1967. I am about to establish the place.

Q Who initiated this conversation between yourself and Mr. Powell?

A Mr. Powell.

MR. NAFTALIS: Excuse me. I take it, this conversation, like the first two witnesses' testimony, is not binding against Mr. Clifford.

THE COURT: At this time.

MR. NAFTALIS: At this time.

MR. BANNIGAN: Nor the bank.

MR. COHN: And the same with Mr. Dowd.

THE COURT: Subject to connection at this time. All right.

Q Now, where did this conversation between yourself and Mr. Powell take place, sir?

A In Mr. Powell's office.

Q Now, was anyone else present at that time other than yourself and Mr. Powell?

A No sir.

Q Was anyone else present other than you and Mr. Powell?

A No.

Q Would you tell the ladies and gentlemen of the jury, to the best of your recollection, what Mr. Powell said at that time, please?

A I was asked to join a group of officers that were making -- going to make contributions to a fund for -- to be used for political contributions.

Q And did -- was anything else said in terms of the amount of money to be given?

A Yes. My salary would be increased by $1700, of which I would pay back into the fund $100 a month. And the other -- the remainder, or the $500, would go to cover the increased taxes and expenses and other deductions from your salary.

Q Is that what Mr. Powell told you, sir?

A Yes sir.

Q Now, was anything said about what kind of officers other than yourself were participating in this organization?

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A What kind of officers?

Q Yes. Did he describe them in any way?

A No. Just that it was a select group, a select few.

Q Now, as a result of receiving the $1700 salary increase for these contributions, how much would the contributions supposed to cost you?

A It wouldn't cost me anything.

Q Now, was there any conversation, again referring to this conversation between yourself and Mr. Powell, about any indirect benefit that you would get?

A Yes. The increased salary would benefit me in the long run through my pension and profit sharing plans because that is the -- the participation is based on the gross salary.

Q Would you please explain to the jury what the pension and profit sharing systems were at the bank?

A The actual operation of the plans?

Q Yes. So they understand what you are talking about when you refer to the pension and profit sharing plans.

A Well, the profit sharing plan, as I recall, a percentage of the bank's net earnings were put aside and participants shared, or your profit sharing account was credited with a certain amount depending on your salary

compared to the amount put aside. The pension was a long-range plan based -- I don't remember the exact formula for it.

Q Is it fair to say that both your pension and your profit sharing would increase with your gross salary?

A Yes. That's what I just said before.

Q Now, was anything said to whom these contributions were to be made?

A No. It would go into a fund.

Q Who controlled the fund? Was there anything said about that?

A Well,initially I was told to make my payments to Mrs. Jaeger.

Q Who is Mrs. Jaeger?

A At that time she was Mr. Powell's secretary I believe.

Q Now, was there anything else said by Mr. Powell that you can recall during the course of this conversation about the contributions?

A Well, I was told that it was a confidential type of arrangement. I shouldn't really discuss it with my associates.

Q Now, did you agree to participate at this time, Mr. Sly?

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compared to the amount put aside. The pension was a long-range plan based -- I don't remember the exact formula for it.

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Q Who is Mrs. Jaeger?

A At that time she was Mr. Powell's secretary I believe.

Q Now, was there anything else said by Mr. Powell that you can recall during the course of this conversation about the contributions?

A Well, I was told that it was a confidential type of arrangement. I shouldn't really discuss it with my associates.

Q Now, did you agree to participate at this time, Mr. Sly?

MR. RYAN: Objection.

THECOURT: No, I will allow it.

MR. RYAN: The form of the question. Mr. Sly's response, if anything --

THE COURT: I will allow it.

You may answer.

Q Did you agree to aprticipate at this time at this meeting?

A At the first meeting, no.

Q What did you say to Mr. Powell?

A I said I wanted time to think it over.

Q And did you take time to think it over?

A Yes.

Q And did there come t time when you once again spoke with Mr. Powell?

A Yes.

Q How soon after this initial conversation when Mr. Powell first broached this subject with you did you speak to him again?

A A day or two later.

Q Now, between the time that Mr. Powell first contacted you in late 1967 and the time you spoke to him again a day or so later, what if anything did you do?

A Well, I did a few calculations to find out

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whether it was -- whether it would cost me anything or not to be a member.

Q Now, after doing those calculations, did you again speak to Mr. Powell?

A Yes.

Q Where did this second conversation take place?

A In his office.

Q Excuse me?

A In his office.

Q Was anybody else present?

A No.

Q What did he say to you and what did you say to him?

A I just said I would agree to be a participant.

Q Now, during either of these conversations with Mr. Powell, either the first one when he first broached it to you, and the second one when you told him you would go along, was there any discussion of the legality at all?

A Not that I can recall, sir.

Q Thank you, sir.

Now, did there come a time when you received the special $1700 contribution increase that Mr. Powell had promised?

A Would you mind repeating that question?

Q Certainly. Did there come a time after your conversation with Mr. Powell --

A Yes.

Q -- when you actually received the special $1700 contribution increase?

A Yes.

Q Approximately when was that, do you recall?

A Shortly after the first of the year.

Q I would like, Mr. Sly, to show you what has already been premarked as Exhibit No. 43 for identification. And I want you to look at Exhibit 43 for identification. And I want you to tell us, looking on there, whether or not you see the $1700 special salary increase listed thereon?

A Yes.

Q What is the date of that?

A January 8, 1968.

Q Shortly after your conversation with Mr. Powell; is that correct?

A Yes.

Q Now, there are other notations on there; isn't that correct, sir, on the card besides the $1700 and the date?

A Yes.

Q Now, does that card -- is that card a fair

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and accurate depiction of all of your salary that you received at the SEcurity National Bank in the years covered there?

A It appears to be.

MR. KATZBERG: At this time, your Honor, the Government would offer into evidence what previously has been marked as Exhibit 43 for identification.

MR. NAFTALIS: No objection.

MR. BANNIGAN: No objection.

MR. COHN: No objection.

THE COURT: Mark it.

THE CLERK: Government Exhibit 43 received in evidence.

Q Now, I notice that you told us, Mr. Sly, did you not, that you got the special $1700 salary increase on 1/8/68; is that correct?

A Yes.

Q I notice you also got another increase on 1/8/68; is that correct?

A Yes sir.

Q How much was that?

A $500 annually.

Q And what was that?

A Merit increase.

Q So you received two increases the same day; is that correct?

A Yes.

Q And I notice that you also got another increase according to this record, seven months later; is that correct?

A Yes sir.

Q On 8/5/68; is that right?

A Yes.

Q How much of an increase was that?

A Another $500.

Q What was that for?

A Merit.

Q That was merit as well; is that correct, sir?

A Right.

Q Now, did there come a time, Mr. Sly, after you recieved the $1700 salary increase that you began to actually make those contributions?

A Yes sir.

Q Approximately when did you start to contribute to this fund?

A Well, it would have to be in January of '68.

Q Of '68.

I want to show you, Mr. Sly, what has already been premarked for identification as Exhibit 50. I want

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you to look at the contents of Exhibit 50. I want you to look at it, sir. I want you to tell us whether or not you recognize it.

A Yes, I do.

Q What do you recognize the contents of Exhibit 50 to be, sir?

A Yes.

Q Do you recognize the contents?

A Yes.

Q What is it?

A They are my personal checks.

Q Are those the checks that you wrote pursuant to this contribution organization?

A Yes sir. I think -- I can't go through every single one, but they appear to be the ones.

Q Would you want to take the time to go through every single one just to satisfy yourself?

A I am satisfied.

Q So the answer is, "Yes?"

A Yes.

Q Now, you told us that you began to contribute sometime around January of '68, is that correct, sir?

A Right.

Q Now, the first check in this exhibit,

Exhibit 50, is dated, is it not, April 12, 1968; is that correct, sir?

A Yes sir.

Q How did you make these contributions between January, February and March of 1968?

A By cash.

Q And to whom did you give the cash?

A Mrs. Jaeger.

Q Excuse me?

A Mrs. Jaeger.

Q How did it come about that you in April of 1968 started to pay by check rather than giving Mrs. Jaeger cash?

A I had been transferred to the bank's new office in Carle Place, 20 miles or more from Huntington, and I didn't consider it prudent to send cash through the inter-office system -- messenger.

(continued next page)

Q So you used a check; is that correct?

A That is right.

Q How did you know to pay by cash originally?

A Pardon me?

Q I say, how did you know to pay by cash originally?

A Well, I was told to make my payments to Mrs. Jaeger, I was in the same office where Mrs. Jaeger was. I would put it in an envelope and took it upstairs.

Q Who told you to use cash?

MR. RYAN: Objection, he has answered.

Q Was this your own idea or somebody else's?

A I think I specifically was told.

Q That is what I am asking you, whether you chose it yourself or were told to do it that way.

A I was told.

Q Now, when you moved you started moving checks; is that right?

A That is right.

Q Again I want you to look at the contents of those checks, and beginning in April of 1968, who were they drawn payable originally to?

A B. Jaeger, Special.

Q Is it fair to say that there are two $50 checks drawn payable to Mr. Jaeger each month?

A Yes.

Q Now, once you moved, how would you transmit these checks physically to Mrs. Jaeger?

A In an envelope through the banks inter-office messenger system.

Q Would you mark the envelope in any way?

A "Personal and confidential."

Q Now, again looking through those checks contained in Exhibit 50, did there come a time when you no longer wrote your checks directly to and made payable to Mrs. Jaeger?

A Yes, sir.

Q Could you look through that exhibit and tell us when the last check is dated that is made payable to Mrs. Jaeger?

A August 28, 1970.

There is another one dated September 11, 1970, but which evidently had been returned to me and I tore my signature off the check.

Q By the way, just parenthetically, 50, A, B, C, D, E and F were identified as checks you wrote pursuant to these contributions; isn't that correct, sir?

A Yes, sir.

Q Now, how did it come about that you stopped writing your checks payable to Betty Jaeger and began writing

them another way; how did that come about?

A I was instructed by another officer of the bank to do so.

Q Who was that, sir; do you recall?

A I believe it was Mr. Dutra.

Q Did you speak to Mr. Dutra in person or over the phone, sir?

A I received a telephone call.

Q You received a telephone call from Mr. Dutra?

A Yes, I got a telephone call.

Q When was that? Approximately when was that?

A Well, I would have to say it was in September or October of 1970.

Q And what did Mr. Dutra tell you on this occasion, sir?

A That from that point on I would be told to whom I would make the checks paayable.

Q And was anything else said in that conversation, that is, when he told you to change?

A I don't recall offhand.

Q Was anything said about who would be --

MR. NAFTALIS: Objection, leading.

THE COURT: I will allow it.

Q Was anything said about who would let you know

who to draw these checks payable to?

A Oh, yes, sir, I would be hearing from Mr. Arthur Chadwick who would tell me, you know, to and how much to make the check payable to.

Q Whom did Mr. Chadwick work for?

A Pardon me?

Q Whom did Mr. Chadwick work for?

A The Security National Bank.

Q And who was his superior?

A I would believe it would be Mr. Dowd.

MR. COHN: If the witness doesn't know, I will object.

THE COURT: Only what you know.

MR. KATZBERG: That is fine, your Honor.

THE COURT: All right.

Q Now, looking at the checks that you wrote after the last Betty Jaeger check -- O.K.?

A Yes.

Q Were each and every one of those checks written by you on Mr. Chadwick's instructions?

MR. NAFTALIS: Your Honor, I don't mean to interrupt, but may I have a continuing objection to this and all the prior testimony as to all of these conversations, outside Mr. Clifford's presence, because

they are not binding, at least in this stage.

THE COURT: All right. But I have told the jury.

MR. NAFTALIS: I don't want to pop up and down and make a nuisance of myself every time a witness speaks about it.

MR. COHN: I assume that applies to Mr. Dowd as well.

THE COURT: Yes.

A By Mr. Chadwick?

Q Yes, sir.

A The only check I am in doubt whether Mr. Chadwick told me to draw that one or not, it is payable to Mr. Dutra, he could have said, Send me a check for $50.

Q Mr. Sly, is it fair to say that other than the October 23, 1970 check made to J. Dutra for $50, you are certain that all the other checks drawn by you were made pursuant to Mr. Chadwick's instructions?

A Yes, sir.

MR. KATZBERG: At this time I'm going to withdraw this, with the consent of counsel.

THE COURT: It doesn't make any difference.

MR. KATZBERG: O.K.

MR. NAFTALIS: Can we see it just for a second,

Mr. Katzberg?

MR. KATZBERG: Sure.

By the way, at this time the Government moves that the entire contents of Exhibit 50, A, B, C, D, E and F into Evidence, your Honor.

THE COURT: Mark them in Evidence.

THE CLERK: Government's Exhibits 50, A, B, C, D, E and F received in Evidence.

(So marked.)

MR. RYAN: I would have liked a little voir dire but perhaps it is too late.

I think there are some void checks in there and I object to those going in, V-o-i-d.

MR. KATZBERG: I have no objection to withdrawing them.

THE COURT: You have some void checks?

THE WITNESS: Yes, sir.

THE COURT: Those are not in evidence, the voids.

MR. KATZBERG: I wanted to make sure that everything that he wrote was submitted, that is all.

THE COURT: All right.

BY MR. KATZBERG:

Q Now, when Mr. Chadwick would call you on these contributions, what would he tell you, sir?

A He would tell me to make out a check to a particular organization and also how much.

Q Now, to your knowledge was Mr. Chadwick the one who was making these decisions as to who these checks were to be drawn to?

A I don't think he was.

Q Now, I want to refer you to the period of time that you made these payments to Betty Jaeger either by cash or by drawing a check to her; did you ever learn where the money went after you gave it to Mrs. Jaeger?

A No, sir.

Q You were never told; is that correct?

A No.

Q Did you ever ask?

A No.

Q Now, did you ever hear of something called, an organization called, between the years 1968 and 1974, did you ever hear of an organization called the Long Island Public Affairs Club?

A No, sir.

Q Were you ever told that you were a member during that period of time?

A No, sir.

Q That is, of the Long Island Public Affairs Club.

A No, sir.

Q Were you ever told or did you know that any of your monies during that time ever went to the Long Island Public Affairs Club?

A No, sir, I didn't.

Q I want to show you a check, Mr. Hart -- I'm sorry, Mr. Sly, made payable to B. Jaeger - Special for $50 on August 28, 1970.

This is one of the checks you identified; is that correct?

A Yes.

Q Could you tell us what the endorsement on the back of that check says?

A "Betty Jaeger - Special, for deposit" -- L -- LIGA.

Q Could that be LIPA, Club, sir.

A LIPA by Betty Jaeger, Assistant Treasurer.

Q Thank you, sir.

Now, I also want to bring to your attention a check which you identified as one of the checks you wrote pursuant to this contributions club dated January 6, 1971.

Who is the payee of that check, sir?

A William Shea.

Q Who is William Shea?

A He is a Senior Partner in the firm of Shea, Gould, Climento & Kramer.

Q Did he have any relationship with the bank?

A I'm sorry, what?

Q Did that firm have any relationship to the bank?

A They were the bank's counsel.

Q Did Mr. Shea play any role in the bank, to your knowledge?

A He was a Director of the bank.

Q Now, is that check drawn by you pursuant to Mr.Chadwick's instruction?

A Yes, sir.

Q Did you ask Mr. Chadwick why you would drawing a check for Mr. Shea?

Do you recall asking Mr. Chadwick why?

A I really don't recall, I may have, but I don't recall.

Q You have no present recollection?

A No, I don't have a present recollection, no.

THE COURT: All right, we will now recess for lunch.

Don't discuss the case and read anything about it.

You may step down.

(At 12:55 p.m. the jury left the courtroom.)

MR. PATTISON: What time shall we return?

THE COURT: Two o'clock.

(A recess was then taken until two o'clock.)

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AFTERNOON SESSION

(The following took place in the absence of the jury.)

MR. PATTISON: Your Honor, at this time we would like to apply for a ruling on a matter before the Court concerning the bank being bound by statements and acts of Mr. Powell and Mr. Dowd.

We feel that clearly these acts were done in the bank and in the course of their job with the bank. They were officers of the bank.

We feel that the bank is in fact bound now and that -- along with Mr. Powell and Mr. Dowd, of course. That a bank can, of course, only act through its officers. The bank never will be present per se at any meeting, conversation, discussion other than in the manner in which the bank was present now.

THE COURT: Are you talking now in reference to the conspiracy of the --

MR. BANNIGAN: Substantive counts, I think.

MR. PATTISON: Substantive counts also.

THE COURT: Substantive counts.

MR. BANNIGAN: The bank isn't named in the conspiracy so its irrelevant.

MR. PATTISON: Mr. Powell and Mr. Dowd were, of course, the chief operating officers of the bank.

It would be harder to go any higher --

THE COURT: What do you say?

MR. PATTISON: -- than that.

MR. BANNIGAN: Well, I don't know what we are talking about here. Are we talking about the testimony and the acts of the individual witnesses as to what they did and said, or are we speaking about what they say Mr. Clifford, Mr. Dowd and Mr. Powell said.

THECOURT: As to the conversations. The conversations plus their activities.

MR. BANNIGAN: I say the following, your Honor: As far as Mr. Clifford, Mr. Dowd and Mr. Powell are concerned, I believe that those statements are admissible against the bank.

THECOURT: What?

MR. BANNIGAN: Are admissible. Are.

I submit, your Honor, that the acts of the officers and what they did is not. And I submit that--

THECOURT: It is not admissible against the bank?

MR. BANNIGAN: Not admissible against the bank, on an election made by the Government before your Honor through the words of the assistant chief of the United States Attorney's office that there was only one person who testified in the grand jury --

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one, if any, I might add -- who bound the bank at the time he -- he testified, at the time he was working for the bank.

Now, they are bound on that. If not, I have been severely prejudiced.

I asked for this material and I was entitled to this material.

THE COURT: I don't see how possibly a statement made before the Court as to some piece of evidence or lack of evidence, either way, can be -- can reduce or limit something in the case. That is what you are asking me to do. I don't know of any rule --

MR. BANNIGAN: Rule 16.

THE COURT: I know Rule 16. Let me finish. I don't know of any rule that even attempts to somewhat impress a fact that there is a limitation to that extent as to proof just because a statement is made before the Court.

MR. BANNIGAN: Your Honor, may I be heard?

MR. PATTISON; Rule 16 --

MR. BANNIGAN: May I finish?

All right, go ahead.

MR. PATTISON: I believe the way I read it, Rule 16 states that -- Rule 16 statements relative

to a corporation are those wherein an officer testifies before a grand jury. And in that sense as to what he says then binds the bank. That, of course, he would have a right to. And that is clearly what the chief assistant meant when he said that as far as he knew there were no officers speaking for the bank at the time they appeared in the jury. And I think a fair reading of the rule is just that.

MR. BANNIGAN: If I may respond to that.

THE COURT: Go ahead.

MR. BANNIGAN: With all due respect to Mr. Pattison, that is absurd.

Subparagraph 2 clearly talks about the events. Bounds the bank at the time of the events.

Subparagraph 1 talks about at the time of his testimony in the grand jury.

Here is the rule.

THECOURT: I have it right here.

MR. PATTISON; Yes.

THE COURT: I am looking at the same thing you are looking at.

MR. PATTISON: Yes. And they both refer to grand jury testimony.

MR. BANNIGAN: They refer --

MR. PATTISON: At the time --

A 268 THE COURT: Any witness before a grand jury who --

MR PATTISON: Yes.

MR. BANNIGAN: That's right. Who --

MR. PATTISON: And was at the time of the offense, referring here to Mr. Powell and Mr. Dowd, Mr. Clifford, personally involved in the alleged conduct constituting the offense.

MR. BANNIGAN: I am not talking about Mr. Clifford, Mr. Dowd and Mr. Powell. We are talking about the witnesses who are testifying now.

MR. PATTISON: Your Honor, the contention that we have -- and I believe this has been made clear all along -- that we hold and we have held, and nothing said earlier changes this, that the bank is bound by the words and deeds of Mr. Dlifford, Mr. Powell and Mr. Dowd.

MR. BANNIGAN: I have not objected to that.

THE COURT: He doesn't object to that.

MR. PATTISON: And there were no statements made before the grand jury.

THE COURT: But what he is saying is, pursuant to Rule 16, by the statements made by Mr. Korman that you limited yourself as to the testimony -- you limit yourself as to the testimony before the grand

jury in binding this defendant bank. That is what he is saying.

MR. BANNIGAN: That's right. Limit it to what those people are alleged to have said.

THE COURT: What they allegedly said.

MR. BANNIGAN: That's exactly right.

THE COURT: That's what he is saying. He's saying that by Mr. Korman advising the Court upon request of submitting information or testimony that would be given in reference to the bank, and when he stated only -- I don't know if it was --

MR. BANNIGAN: One. If one or any, were the exact words.

THE COURT: Testified that at that time pursuant to this rule, Rule 16, that grand jury testimony is all that is going to come before the Court and anything else is limited.

MR. KATZBERG: Can we have an instruction to the jury that they may consider what Mr. Dowd -- what the witnesses say MR. Dowd has said and what the witnesses have said Mr. Powell has said --

THE COURT: They can consider anything that is --

MR. KATZBERG: As binding against the defendants.

MR. BANNIGAN: Subject to connection. The same

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connection.

MR. KATZBERG: Fine.

MR. BANNIGAN: The same connection that you have with the other defendants, with the other statements by the other counsel.

THE COURT: Well, the entire --

MR. PATTISON: I don't understand that. Subject to connection?

THECOURT: Well, because the testimony that comes in, comes in generally speaking as to one or maybe two of the defendants.

MR. PATTISON: And the other parties are not really named or in any way is there any inference to be drawn by the testimony referable to the other defendants. Certainly, as far as the other single parties go --

THE COURT: And therefore --

MR. PATTISON: The bank is bound.

THE COURT: Right. But eventually if the evidence comes in --

MR. PATTISON: Yes.

THE COURT: Then the connection is --

MR. PATTISON: With all of them.

MR. KATZBERG: Your Honor, can the Court now instruct the jury because they may be under a

misapprehension. Can you instruct the jury that they can consider subject to connection the statements of Mr. Dowd and Mr. Powell and Mr. Clifford?

THE COURT: Then --

MR. KATZBERG: As binding the bank.

THE COURT: Then we must give the double of that. In the event that it is not connected, they must be able to disregard ti.

MR. KATZBERG: Fine, Judge.

THECOURT: In any event, if it is connected, they --

MR. KATZBERG: As long as they can relate that to binding the bank.

MR. BANNIGAN: I am not sure. Well, I think we discussed this, that there will be a charge given on this area because of the complexity of the --

THE COURT: I asked both of you to submit the charge.

MR. BANNIGAN: Under the Rule 16 problem.

MR. KATZBERG: We will be submitting charges. We will be submitting requests.

MR. BANNIGAN: I think you made it clear. But if you are going to give the instructions and amplify the fact that the acts of the witnesses don't bind the bank, that's what we have been talking about.

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THE COURT: The acts of the witnesses?

MR. BANNIGAN: The acts of the witnesses.

THE COURT: Only if the proof should show that the acts of the witnesses were on behalf of the bank or in some way or some semblance were connected to the bank s activities.

MR. KATZBERG: At the direction of those who could bind the bank, Mr. Clifford, Mr. Powell and Mr. Dowd.

THE COURT: Now --

MR. BANNIGAN: Now we have the problem here and you have stated it, your Honor. You have stated the juxtaposition against what Mr. Korman said. None of those people bound the bank. And I want an instruction that their testimony of what they did doesn't bind the bank.

THE COURT: It's subject to connection.

MR. BANNIGAN: Because -- no, your Honor. The Government has elected by refusing to turn over the Rule 16 material --

THE COURT: I understand what you are talking about.

MR. KATZBERG: Judge, Mr. Korman said that none of the people individually in and of themselves could bind the bank. Our position is that based on the

authority delegated to those people, the --

THE COURT: It has to be shown.

MR. KATZBERG: Exactly.

THECOURT: That's what he is talking about.

MR. BANNIGAN: Then they should have turned over the material under Rule --

MR. KATZBERG: They have all the material.

MR. BANNIGAN: Sure. You turned it over with all the 3500.. You were requested to turn it over a month ago and you didn't.

THE COURT: You are supposed to specify when you turn over 3500 --

MR. BANNIGAN: Rule 16 is a discovery rule which requires the Government to comply within a reasonable time. Rule 3500 has nothing to do with discovery. And I believe that Rule 16 mandates that the Government turns it over upon request. And a request was made a month before the trial started and nothing was turned over.

THE COURT: Any rule is promulgated within the discretion of the Court to determine whether or not the withholding of material upon a request was unreasonable. It is still within the discretion of the Court. There is no rule that is so mandatory that the Court can't exercise discretion as to whether

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or not it's proper at the time they give it.

MR. PATTISON: The request was answered.

MR. BANNIGAN: It was denied.

MR. PATTISON: It was answered. And the answer was that you had waived.

Now, the Court has ruled on that on a Monday, and within 72 hours later you had these items.

MR. BANNIGAN: The Court ruled on Monday that you tender those documents to me the following Monday, which was not done.

That was your order of the Court.

MR. KATZBERG: For the record --

MR. BANNIGAN: Your order, not mine.

MR. KATZBERG: For the record, the initial request by Lord, Day and Lord through Mr. McBaine was not made on -- the letter itself wasn't dated until February 10th. The Government didn't receive the letter until February 13th. Hardly talking about a request being made a month before trial -- the trial date was March 1st.

THE COURT: Almost two weeks.

MR. KATZBERG: Approximately two weeks. Not a month.

(continued next page)

MR. BANNIGAN: It was one document on the Government's theory that they had to turn over.

THE COURT: It is still a question -- with all the documents in this case, there is a question as to whether or not this was a lack of exercise of proper discretion in not turning it over sooner or whether the Court itself can assume that it was done within a reasonable time within its own discretion. I think under the circumstances and the nature and type of case it is that I would be -- I would say that it was done within a reasonable time without any injury to the defendants or harm. And I don't see any harm or prejudice to it.

MR. BANNIGAN: Well, the prejudice that I see, your Honor, is that I was tendered 2,000 pages of grand jury testimony and miscellaneous documents which I could have better devoted my other time before this trial started than to do that when I should have been doing other work in connection with this case.

THE COURT: I think I have come to a --

MR. PATTISON: Then a request should have been made months ago.

THE COURT: All right, that's my conclusion. I think it was given within reason and therefore I will not --

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MR. KATZBERG: Lord, Day and Lord were in this case in September and there is no --

MR. BANNIGAN: I recited Rule 12. That's the only one they know.

MR. KATZBERG: Can we get the instructions from the Court that your Honor indicated that he would give.

THE COURT: I will give an instructions that the testimony coming in is coming in subject to connection. In the event that it is not connected to the defendant bank, they are to disregard it.

MR. KATZBERG: But they can consider Mr. Powell, Mr. Clifford and Mr. Dowd's statements if it is connected as binding the bank.

MR. BANNIGAN: I ask --

THE COURT: If it is.

MR. BANNIGAN: I ask you to reserve that until the --

THE COURT: We can give it to them in any event, that they need not have the -- the same argument as to--

MR. BANNIGAN: You are suggesting to them that it's connected. I think if you say that you --

THE COURT: Every time a judge says something -- every time a judge talks, he is suggesting. And I just hope that the jury understands that the Court doesn't have an opinion. There's no other way I know

of doing it. Unless I go inside and do it by some other means. I don't know any other way.

MR. BANNIGAN: Well, your Honor, I respectfully except.

THE COURT: All right. You take an exception to it.

MR. KATZBERG: All right. Thank you, Judge.

THE COURT: All right.

MR. KATZBERG: Shall I bring in the witness.

MR. NAFTALIS: There are one or two things I want to bring up. I know I don't want to hold you up with the jury. One of them can wait.

THE COURT: Well, we will take one of them.

MR. NAFTALIS: Okay. First --

THE COURT: You read that.

MR. NAFTALIS: Since I have been an avid newspaper reader over the last two or three days, I have located today's Village Voice.

THE COURT: Located? They put it out with a sore thumb. That's like hanging from the tree. The leaves are ready to fall into the lap of the passers.

MR. NAFTALIS: Fortunately I have a use for these old newspapers. I have a cat at home.

There was an article in the newspaper, the Village Voice today entitles, "The boys in the bank,"

by Jack Newfield.

THE COURT: There are two writers.

MR. NAFTALIS: Yes. I think Newfield --

THE COURT: The other columnist is Dubraul.

MR. NAFTALIS: Dubraul.

In the course of Mr. Newfield's article --

THE COURT: I decided I must keep abreast of all this business.

All right, go ahead.

MR. NAFTALIS: Well, I will cut it out and ask your Honor's Court Clerk to mark it as an exhibit.

THE COURT: You want that little paragraph down there, just the bottom of the first column where it says who belonged to what banks and what happened.

MR. NAFTALIS: And he said that the --

THE COURT: And under suspicious circumstances.

MR. NAFTALIS: You're ahead of me as always, Judge.

THE COURT: I hope to be ahead of everybody in the Courtroom. That's why I sit up here. Otherwise I don't belong up here.

MR. NAFTALIS: I have one other matter which could be brought up later. It is in connection with the cross-examination of Mr. Sly by the defense.

Do you want us to bring it up now or --

THE COURT: Well, you can do it now as long as the jury is not here so I don't have to take a tri to the side.

MR. NAFTALIS: Your Honor was kind enough yesterday in connection with Mr. Ryan to allow Mr. Ryan to examine I guess --

Who was it? Fretz.

MR. PATTISON: Fretz.

MR. NAFTALIS: To use him as a character witness, to the good character and integrity of Mr. -- with Mr. Powell.

THE COURT: Just so we didn't have to bring him back.

MR. NAFTALIS: I intend to do the same thing with Mr. Sly. And I mentioned that to the Government this morning to find out quite frankly whether or not they intended to cross-examine him on any matter. I was informed by Mr. Pattison that there were matters that they wished to cross-examine him on. I am not talking about, do you know anything about the facts in the case. I am not talking about that kind of cross. I am talking about bringing to his attention some sort of misdeeds or alleged misdeeds of the other -- by the Government and -- and I would ask, your Honor, that the Government state to the Court now what those things are so we can

get a ruling on them, whether they would be permissible or not.

I would think -- because that would obviously determine whether or not I wanted to put in character testimony from Mr. Sly or anybody else in the world. Obviously, it is quite similar, it seems to me, to the situation where you want to put a defendant on the stand and you want to get a ruling -- there's no convictions or arrests in this case. But you want to get a ruling as to whether a conviction is admissible.

THE COURT: You want to find out how nice a guy he is.

MR. NAFTALIS: There may be some --

THE COURT: I don't think that makes proper sense to me. It's like you are trying to find out who is on first and when he is going to second base.

MR. PATTISON: Usually what occurs in that other case, the defendant has a specific matter which they do not want brought up. And they ask the Court for a ruling that no cross-examination be allowed.

THE COURT: Why else would he ask the Court.

MR. PATTISON: Now they are asking us to say, what are you going to cross-examine him about, and then --

THE COURT: I don't think you have a right to ask. Your only right at this time is to ask the Court whether or not to permit him to ask about character and reputation, and making him a witness. And my answer to you is, yes, only because it would not delay the trial.

MR. NAFTALIS: I appreciate that a great deal.

THE COURT: As far as what the Government is going to ask after you ask those questions, I don't think -- again, searching my mind for -- in all the numerous rules in all the books and rules of evidence, I can't think of one rule of evidence that permits me to do it.

MR. NAFTALIS: Your Honor, what I would think and --

THE COURT: I know, in all fairness.

MR. NAFTALIS: The reason I ask this is that it is simply because I am not -- obviously I am not trying to preclude Mr. Pattison from asking questions which are legitimate. I mean that is his job.

THE COURT: I understand. We have two rules in the law. One is the one that says, all other just relief and all other -- all other further and just relief that the Court may deem is fit, or something to that effect.

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MR. NAFTALIS: Absolutely.

THE COURT: Then we have the other rule, which is in all fairness rule.

Now, I have never been able to find out, where do I start with the all fairness, and where do I end with it. So, therefore, I am not going to make a determination at this time.

MR. NAFTALIS: The reason I say this --

MR. PATTISON: If we could both agree to follow the same attack, that is perfectly all right. If we intend to call a witness, then have him tell us everything that he intends to cross-examine him --

THE COURT: That's the all fairness rule.

MR. PATTISON: We will be glad to do that.

MR. NAFTALIS: The difference is -- and I am not going to belabor this.

THE COURT: I am not going to go by the all fairness rule.

MR. NAFTALIS: The only thing I want to suggest was this. I'm not suggesting that Mr. Pattison should tell me what he wants to cross-examine Mr. Clifford, should he testify, or any substantial witness that I or any defense counsel would want to call to testify to facts of the case. I mean obviously I -- I wouldnt even consider making that request. Of course not.

What I am talking about is the character area, people in good faith and -- and I have a lot of regard for Mr. Pattison's integrity and good faith as well as his zeal as a prosecutor. And I mean that as a compliment. And it is what people interpret as permissible to cross-examine a character witness is very much in the eye of the beholder. And I would hate to see a situation where he says, have you heard X, Y and Z, and it turns out to be an impermissible question which is highly prejudicial, and which your Honor would have excluded had you known about it ahead of time. And then you have the problem of, do we have a mistrial or not. I don't want a mistrial. I would rather have this problem smoked out and taken care of so that then we all go into this with our eyes open and no one can say, "Hey, I was ambushed because I wanted to make those kinds of arguments."

That's really what I am talking about.

MR. PATTISON: To avoid that and -- your Honor, rather than to avoid that occurring, he would like to know where our troops are and in what areas, what strength, to avoid the ambush, which I think that type of situation could occur. Of course, error can occur at any time.

THE COURT: Let's try not to.

MR. PATTISON: Of course not. But we, of course, understand the rules of evidence which involve cross-examination of character witnesses probably not as well as you do, sir, but I am sure close to it. And you know and we know the areas which we may not go into. We will ask questions only for which we have a good faith basis in fact for asking and which deal with the particular character traits which are sought to be brought into evidence here.

Beyond that, I can think of no other areas.

THE COURT: Whatever you thought of, they accept.

MR. PATTISON: Which are even risky.

THE COURT: They like whatever you said.

MR. PATTISON: Okay.

MR. NAFTALIS: Fine. Thank you, your Honor.

MR. KATZBERG: May I now call Mr. Sly, Judge?

THE COURT: What's that?

MR. NAFTALIS: May I recall the witness.

THE COURT: Yes.

(Continued next page.)

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MR. KATZBERG: Will you resume the stand, please.

W I L L I A M S L Y , having been previosly duly sworn, testified further as follows:

THE COURT: All right, bring in the jury now.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right. Before we start any further testimony, I have been requested to give you the following instructions in reference to the defendant, the Security National Bank, that you know there's been testimony now of witnesses stating conversations with the defendants, Mr. Clifford, Mr. Powell and Mr. Dowd. And you have heard me say that that testimony may not be binding on one of the defendants or both defendants and not on the bank. And I tell you now that the testimony that came in, although not binding on the bank, is being taken subject to connection. In the event that the testimony should be connected to the defendant bank, then you will accept it and weigh it. If it is not connected, then you will disregard it.

All right.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. KATZBERG (Continued):

Q Mr. Sly, you will recall that prior to the luncheon recess we were reviewing the checks that you wrote pursuant to this contribution method which are identified in Exhibit 50 now in Evidence; is that correct, sir?

A Yes, sir.

Q Now, I want you to go through the -- look at one or more of those checks, which is part of Government Exhibit 50 in Evidence. It is a check dated January 11th, 1973. Now, could you look at that check and tell the jury who that check is drawn payable to?

A Payable to the Security National Bank.

Q Now, on whose instructions did you write that check payable to the bank?

A Mr. Chadwick.

Q Did you ask Mr. Chadwick why you were drawing a check payable to the bank?

A No, I did not.

Q Did he tell you?

A No, he didn't.

Q Now, from the time that Mr. Chadwick would make these phone calls to you to tell you who to draw the checks to and in what amounts, and all those checks that you wrote

pursuant to his instructions contained in Exhibit 50, did you at any time chose the politician, the political committee or the political event that those checks were drawn to?

A No, sir.

Q Thank you.

MR. KATZBERG: Your Honor, the check drawn payable to the bank, may it be passed to the jury?

And with that I have no further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. RYAN:

Q Did you ever go to dinners sponsored by a political organization while you were associated with the bank?

A I am sorry?

Q Did you attend dinners when you were associated with the bank?

A Yes, I did.

Q Sponsored by a political organization?

A I am sorry?

Q Dinners sponsored -- dinners like the Republican Party dinner or the Democratic Party dinner or anything of that kind?

A I can't recall definitely. I may have been at

one or two, but I can't recall.

MR. RYAN: May I have the checks, please.

Q There are two checks that relate to two specific counts in the indictment in which Frank Powell is named. I show you Exhibit 50-A, a check dated August 25, 1972, to the Suffolk County Republican Committee. Did Mr. Chadwick tell you to write that check out?

A Yes, sir.

Q Did Frank Powell have anything to do with that check?

A I don't know.

MR. KATZBERG: Objection.

MR. PATTISON: Objection.

MR. KATZBERG: How does he know.

MR. PATTISON: That's a legal point.

THE COURT: Well, do you know?

MR. KATZBERG: If you know.

THE WITNESS: I don't know.

THE COURT: He doesn't know.

Q O.K. Then let me show you Government Exhibit 50-B, a check payable to the Friends of Angelo Roncallo, dated October 13, 1972. Did Mr. Chadwick tell you to write that check out?

A Yes, he did.

Q Was Frank Powell -- did Frank Powell have anything to do with that check?

MR. KATZBERG: If the witness knows.

THE COURT: Wait a minute.

Anything you say is if you know. If you don't know, you can't say it.

THE WITNESS: I don't know.

THE COURT: All right.

Q You don't know, right? O.K.

Now, when Frank Powell invited you to participate in this program, in the initial meeting, did he tell you that it was strictly voluntary and it was up to you to decide whether or not you wanted to join this program?

A He told me it was voluntary.

(Continued on next page.)

BY MR. RYAN:

Q And did he in any way imply that it was illegal?

A Did he what?

Q In any way imply that this program was illegal?

A No, sir.

Q Did he in any way imply that if you didn't join the program, it would be held against you?

A No, sir.

Q In matters of salary, was it customary that you would be in a room with the officer who told you you would get an increase and nobody else being present?

A Yes.

Q In other words, salary matters are confidential matters, aren't they?

A Yes.

Q Were you told to keep this confidential by Mr. Powell because there was something wrong here?

A No.

Q Did he imply it, that there was something wrong here?

A No.

MR. RYAN: I have no further questions.

THE COURT: Anyone else?

MR. NAFTALIS: I have some questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good afternoon, Mr. Sly.

A How do you do.

Q I represent Patrick Clifford.

Did you ever have any conversations with Mr. Clifford relating to the subject of political contributions?

A No, sir.

Q Never had any?

A No.

Q Did you ever have any conversations with Mr. Clifford about the raise that you had received, that you received for your use in making contributions?

A No, sir.

Q Never had any conversations with him about that either?

A No, sir.

Q How long have you known Mr. Clifford?

A 25 or 26 years.

Q And you have worked together with him in banking for 25 or 26 years?

A Yes, sir.

Q And during the course of that time, you had an opportunity to observe his customs and practices; is that correct?

A I would think so.

Q And based on your observations of the practices of Mr. Clifford -- withdrawn.

What was Mr. Clifford's primary area of interest?

A Commercial lending -- commercial business loans.

Q I take it, is it fair to say, the area of making loans was the area that Mr. Clifford devoted most of his time, devotion and interest to?

A That needs an explanation.

Q I'd be delighted to hear it.

A Well, in the early years, it was, primarily that was his function. Later years, the same thing but also administrative.

Q During the time that you worked with him, you say it was about 25 years?

A Yes.

Q You had an opportunity to work with him on various matters, particularly lending matters?

A He was my immediate supervisor.

Q And during the course of that time, I take it, there were occasions that came up where there was questions raised whether something was legal or illegal or proper or improper to do?

A I would think so, sure.

Q And isn't it a fair and honest statement to say that it was Mr. Clifford's practice to make sure that all the laws and regulations were scrupulouisly and completely observed?

A Absolutely.

MR. NAFTALIS: I have no further questions.

MR. BANNIGAN: No questions, your Honor.

THE COURT: All right, you may step down.

MR. KATZBERG: May I ask one question?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q Isn't it also a fact that one of Mr. Clifford's prime concerns was attracting new business to the bank?

A Yes.

Q Isn't it also a fact that Mr. Clifford was

hardly an absentee runner of the bank, that he ran the bank on a pretty close basis?

A I'm sorry. Would you repeat it?

Q Isn't it a fact that Mr. Clifford maintained rather a close control over the bank and its operations?

A Yes.

MR. KATZBERG: Thank you.

That's all I have.

THE COURT: All right. You may step down.

(Witness excused.)

B E T T Y J A E G E R , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MRS. JAEGER:

Q Mrs. Jaeger, in a loud clear voice, so that everybody in the Jury box can hear you, could you give us your present occupation?

A Assistant manager of Chemical Bank.

Q For how long have you been employed by the Chemical Bank?

A Since January of 1974.

Q January what -- I'm sorry, I missed that.

A '75.

Thank you, Mrs. Jaeger.

ROBERT BRADLEY, called as a witness on behalf of the Government, having been duly sworn by the clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Bradley, in a loud clear voice, sir, so everybody in the jury can hear you, will you give us your current employment?

A Yes.

I am with the Central State Bank of New York.

Q For how long have you been so employed?

A Just this week.

Q And prior to that time, by whom were you employed?

A The European-American Bank.

Q When did you start with the European-American Bank?

A The European-American Bank, as you know, took over the Franklin National Bank and I started there in the latter part of March, the first part of April 1971.

Q Now, prior to March or April of 1971 when you started to work for the Franklin, by whom were you employed?

A The Security National Bank.

Q And what was your title at the SEcurity?

A Senior vice president.

Q And who hired you at Security?

A My first contact was with David Dowd and then with Mr. Clifford and then with Mr. Mause.

Q Now, who was your immediate superior at the Security National Bank?

A David Dowd was when I first joined.

Q And thereafter?

A I guess I reported to Patrick Clifford and David.

(continued next page)

BY MR. KATZBERG:

Q Now, when you first started at the bank in 1967 where were you located physically?

A Huntington, Long Island.

Q Was that a branch or was that the main headquarters?

A Main office.

Q Was Mr. Dowd also there?

A Yes.

Q How about Mr. Clifford?

A Yes.

Q Now, Mr. Bradley, I want to direct your attention to November -- approximately November of 1967. Did there come a time when you had a conversation with someone with respect to political contributions?

A Yes. It was with Mr. Dowd.

Q David Dowd?

A Yes.

Q Who at that time was your boss?

A Yes sir.

MR. COHN: I am sorry.

THE COURT: I didn't hear that.

MR. KATZBERG: Who at that time was your boss, answer, yes.

THE COURT: His boss.

MR. KATZBERG: Yes.

MR. COHN: His boss?

THE COURT: I was wondering what he said.

Q Where did the conversation with Mr. Dowd take place?

A At Mr. Dowd's office.

Q Was anybody else present?

A No.

Q Who initiated this conversation? You or Mr. Dowd?

A David.

Q Mr. Dowd?

A I mean Mr. Dowd.

Q Could you please tell the ladies and gentlemen of the jury what Mr. Dowd said to you, taking it from the very beginning.

A Well, at that time we -- he was discussing the fact that we were going to have an increase in pay, the senior officers of the bank, and that we would be giving back to the bank $100 a month.

Q Did he indicate what the purpose of that was?

A I asked him what the purpose was. And it was for political contributions and various other contributions.

Q Did Mr. Dowd indicate how much the salary increase would be that you would be getting?

A Yes. Originally I thought it was 1800. And then I subsequently found out it was 1700.

Q Now, how much money were you supposed to be making in the political contributions?

A I'm sorry. I didn't hear your question.

Q Did Mr. Dowd say how much these political contributions would be that you would be giving?

MR. COHN: I object. Why doesn't he ask him what the conversation was and let the witness testify.

THE COURT: Yes.

Q Would you continue relating the conversation.

A In what respect? I am sorry.

Q Well, picking up the conversation where we left off, you just continued going through --

A I was to receive $1700 a month and I would be turning back 100 a month, and the additional 500 a month was for the taxes.

Q What else if anything did Mr. Dowd say?

A Well, just as I said before, that it was -- this was something being done by the senior officers in the bank. It was to help us build our image on Long Island, build our deposits.

Q What did you say to that?

A I told him at the time I didn't like it. But once I did ask him whether we had a legal opinion on this.

Q What did he say to this?

A He said, yes, he did. I asked if -- at that time if I could see it. But it was a verbal opinion.

Q Was anything said about a written opinion?

A Yes. David said he was getting a written opinion. And I said I would like to see it when he received it.

Q Did there ever come a time when you saw a legal written opinion?

A No.

Q Now, after Mr. Dowd told you that it was approved legally, what if anything did you say?

A Well, at the time I said to Dave, I didn't like the idea, but if everybody was going along with it, I would go along with it.

Q What if anything did Mr. Dowd say in response to your saying you didn't like it?

MR. COHN: If your Honor please, I am going to object to this. All he should ask this witness is, what did you say and what did he say, not put words in the witness' mouth.

MR. KATZBERG: I am not putting words in his mouth.

THE COURT: All right. We are getting down to the question.

Go ahead.

THE WITNESS: I am sorry.

Q You indicated that after Mr. Dowd sayd that they had an oral opinion, that you indicated --

MR. COHN: Your Honor, this is exactly what I am objecting to. The witness testified --

MR. KATZBERG: I wanted to pick up the sequence.

MR. COHN: May the prosecutor be directed to ask a simple question to the witness, what else did you say and what else did Mr. Dowd say.

THE COURT: I don't think the witness remembered where he left off.

Do you remember where you left off?

That's the problem.

THE WITNESS: No. Not right now. I'm a little confused.

THE COURT: All right.

Q After you told Mr. Dowd that you didn't like it --

A Right.

Q -- what if anything did he say?

A 302

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A He said it was for the benefit of the bank, that it would help us to improve our image, that we would be getting more municipal deposits, and help the bank grow and help all of the officers in the bank grow.

Q What if anything did you say to that?

A I still didn't like it.

Q Did you agree to participate?

A Yes, I did.

Q Now, was anything else said during the course of this conversation that you can recall?

A No. That was just about -- just the conversation.

Q Now, did there come a time when you ever spoke to Mr. Clifford about this matter?

A During my tenure with the bank I spoke to Mr. Clifford once. And that was about 30 days later in his office. And it was only for just a fraction of a time. I just happened to say that Dave had talked to me about it and I didn't like the program.

Q Now, where did this conversation with Mr. Clifford take place?

A In Mr. Clifford's office.

Q Was anybody else present?

A His secretary at the time.

Q Other than the secretary, was there anybody else present besides yourself and Mr. Clifford?

A No.

Q When you told him what you said you told him, what if anything did he say to you?

A He just said it was for the good of the bank. And that was the end of it. And we dropped it.

Q Now, did there come a time after these conversations with Mr. Dowd and Mr. Clifford that you actually received the promised $1,700 salary increase?

A Yes.

Q Approximately when was that. Do you recall?

A I would say around December of 1967 I think. But I --

Q I think we can specify it rather accurately. I would like to show you Exhibit 4 for identification. I would like you to look at Exhibit 4 for identification and tell us, if you will, if you see that $1700 contribution increase on that document?

A Yes.

Q What is the date?

A 11/27/67.

Q That's the increase we are talking about; is that correct, sir?

A 304

A Yes.

Q By the way, this document -- no.

MR. KATZBERG: At this time the Government will offer Exhibit No. 4 into evidence.

MR. BANNIGAN: No objection. The bank has no objection.

MR. NAFTALIS: May I see it? I have no objection, but just let me see it.

MR. COHN: We have no objection, your Honor.

THE COURT: All right, mark it.

MR. KATZBERG: May it be marked, your Honor.

THE COURT: Yes.

THE CLERK: Government Exhibit 4 received in evidence.

Q Now, I notice on Government Exhibit 4 you said that the $1700 contribution increase is 11/27/67; is that correct?

A That's right.

Q Now, there's another increase on the 1/8/68, less than two months later; is that correct?

A That's right.

Q How much of an increase was that?

A $3,000.

Q What was that increase for?

A I imagine it was a merit increase. Yes, it was. In December, yes. Merit increase.

Q Thank you, sir.

Now, did there come a time after you received this $1700 increase on 11/27/67 that you began making the political contributions?

A Yes.

Q I would like to show you the contents of Exhibit 67. I want you to look at that 67 for identification. I would like you to look at that, sir, and tell us whether or not you recognize the contents?

A Yes. These were the checks that I made out on my personal account each month.

Q Pursuant to these contributions; is that correct?

A Yes.

Q Now, to whom are those checks drawn initially?

A They are drawn to cash. And I was instructed at the time to deliver them to Betty Jaeger.

Q Who told you that, sir?

A Dave.

Q Mr. Dowd?

A Yes.

Q Now, for how long a period of time did you continue to draw your checks to cash and give them to

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Mrs. Jaeger?

A It would be up until I'd say August or September of 1970. I think it was August or September, 1970.

Q Thank you, sir.

Now, during this period of time, when -- between 1968 and 1970, when you would be giving these checks to Mrs. Jaeger, did you ever learn where the money was going?

A No. I never asked.

Q Now, you told us that there came a time when you no longer made your checks payable to Mrs. Jaeger or to cash; is that correct?

A That's right.

(Continued next page.)

BY MR. KATZBERG:

b/ss

pm2

Q How did that come about?

A I received a telephone call. And it was either from Arthur Chadwick or Harry Sykel (phonetic). One of the two. I think it was Arthur. I don't remember right now. And I was told that I was to send the checks from then on to a name that they would give me.

Q And thereafter did you follow that practice?

A Yes.

Q Now, did you ever hear of an organization during these years, 1969, 1970, 1971 -- did you ever hear of an organization by the name of the Long Island Public Affairs Club?

A No.

Q Were you ever told that you contributed to the Long Island Public Affairs Club?

A No.

Q Did you ever tell anyone that your contributions were going to the Long Island Public Affairs Club?

A No.

Q I want to show you a check from the batch that we just identified, and tell us -- it's a check dated August 7, 1970, made payable to cash, $100. Tell us what the back of that check -- what the endorsement reads.

A Long Island PublicAffairs, Betty Jaeger.

Long Island Public Affairs Club. Betty Jaeger, Treasurer, I don't know what the above name on that is.

Q Thank you, sir.

Now, do you know an individual by the name of Robert Vandermark?

A Yes.

Q Did he work for the bank?

A Yes, he did.

Q What was his title?

A Senior vice president.

Q Who did Mr. Vandermark report to?

A He reported to me.

Q Now, do you know an individual by the name of William Hadley?

A Yes, I do.

Q Did Mr. Hadley work for the bank?

A Yes, he did.

Q And what was his title?

A Vice president.

Q Who did he report to?

A He reported to me also.

Q Now, do you know an individual by the name of George Mause, M-a-u-s-e?

A Yes.

Q Did he work for the bank as well?

A He did.

Q What was his title?

A It was vice president or senior vice president. I can't remember. I think it was vice president.

Q Who did he work for?

A He worked for me also.

Q Now, did there come a time in late 1970 when you had a conversation with Mr. Vandermark with respect to actions that Mr. Vandermark took in regard to Mr. Mause?

MR. NAFTALIS: Objection. If he's going to elicit the conversation --

MR. KATZBERG: We haven't gotten the conversation.

MR. NAFTALIS: Then I withdraw the objection.

THE COURT: He wants to know if there was a conversation.

Q Did you have such a conversation with --

THE COURT: Did you have such a conversation.

THE WITNESS: In reference to the two gentlemen?

Q Yes.

A Yes.

Q Now, where did the conversation take place?

A 310

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A In my offic

Q WAs anybody else present?

A My secretary may have been because her desk was also in my office.

MR. KATZBERG: Your Honor, may we approach the bench for one moment so I can get a ruling.

(The following took place at the side bar.)

MR. KATZBERG: Your Honor, I would like to elicit the actual conversation between Vandermark and Bradley. Vandermark is the very next witness. And we will be able to confront him with the conversation. He is the very next man to testify.

Moreover, I think that by the end of the trial it will be established through Mr. Vandermark certainly and later witnesses that these were conversations in furtherance of the conspiracy. It is certainly no confrontation problem. And while these are extra judicial declarants, Mr. Vandermark will be here to be cross-examined about them.

MR. NAFTALIS: If your Honor please, Mr. Vandermark is not a co-conspirator, nor is this gentleman a co-conspirator. If Mr. Vandermark were a co-conspirator, that would be something quite a bit different. But Mr. Vandermark is just an ordinary

citizen of the United States. Therefore, any conversation with gentleman --

THE COURT: Did he work with the bank?

MR. KATZBERG: Yes.

THE COURT: He worked for the bank.

MR. BANNIGAN: What does that do?

MR. NAFTALIS: Your Honor, the only exception which would -- most respectfully, the only exception which would allow in certain circumstances an out-of-court declaration by a third party, which would be applicable here, would be the co-conspirator's exception. Mr. Vandermark is not a co-conspirator, and -- because we have the bill of particulars here which lists the co-conspirators.

MR. KATZBERG: I am not saying he is. The only purpose for the hearsay exception is the lack of ability to confront the declarant -- the declarant will be confronted tomorrow with any --

MR. NAFTALIS: Elicit it from him.

THE COURT: Why can't he ask the --

MR. PATTISON: We can elicit it.

THE COURT: Then you have to bring him back. All right.

MR. KATZBERG: Which is the same thing. It

doesn't matter who I call.

MR. NAFTALIS: There is a basic problem up and above the hearsay problem. There is the whole question of relevancy. These statements are not relevant unless they are in furtherance of the conspiracy.

MR. KATZBERG: My offer of proof --

MR. NAFTALIS: Let me finish.

THE COURT: Wait a minute.

MR. NAFTALIS: And by definition they cannot be in furtherance of the conspiracy because neither of these two gentlemen are co-conspirators. If he had a conversation with Mr. Clifford, I couldn't object. If he had a conversation with Mr. Powell or Mr. Dowd or any of the several people he named in the bill --

THE COURT: How could it be in furtherance of the conspiracy.

MR. KATZBERG: Because based on instructions from one of the co-conspirators, Mr. Vandermark talked to Mr. Bradley to have Hadley and Mause introduced into the club.

THE COURT: This is not just a participant. He is not just a -- as they say, a passer-by or a --

MR. KATZBERG: There is no question that it will be shown in this conversation to get Hadley and Mause

into the club was in furtherance of this conspiracy. There is no --

THE COURT: But how can he further the conspiracy if he doesn't know about it.

MR. RYAN: Only a co-conspirator can further the conspiracy.

THE COURT: Yes.

MR. PATTISON: Your Honor, that is not quite the case.

THE COURT: Well, I would rather wait until --

MR. PATTISON: He can issue an order to an unknowing person to do a certain thing or to tell another person a certain thing. Therefore, it comes --

THE COURT: What you are saying is that it's in the mind of the co-conspirator and it doesn't make any difference what the other person knows.

MR. PATTISON: If he's merely following orders and mouthing words which he has been told to mouth, then it doesn't come in for the truth, but for the --

MR. BANNIGAN: You are offering it for the truth.

MR. PATTISON: But the fact that it was --

MR. BANNIGAN: But you are offering it for the truth.

MR. PATTISON: No. We are offering it for what was said.

MR. BANNIGAN: Oh, come on.

THE COURT: I don't know what that means.

MR. BANNIGAN: State of mind?

MR. KATZBERG: No. Hadley and Mause were introduced to the club.

THE COURT: All right. This is a good time to recess. I will think about it and tomorrow we will come to the end of it.

MR. PATTISON: We will make an offer of proof as to the subject matter outside the presence of the jury.

THE COURT: All right.

(End of side bar.)

THE COURT: All right. I think this is a very good point to recess for the day. I have advised the lawyers that we would recess each day at 4:30. I realize that they have additional matters that they must take care of. And, therefore, we will do that.

You are not to talk about the case, not to read anything in the newspapers, not to listen to the news media. Keep an open mind. Tomorrow we will ask you whether you have read or heard anything about this

DIRECT EXAMINATION

BY MR. KATZBERG:

MR. KATZBERG: Before I continue with Mr. Bradley's examination, there is one housekeeping detail.

The Government wants to offer Exhibit 65 into evidence. I failed to do that yesterday.

THE COURT: All right.

MR. RYAN: No objection.

MR. BANNIGAN: No objection.

THE COURT: Mark it.

THE CLERK: Government Exhibit 65 received in evidence.

(So marked.)

MR. KATZBERG: Thank you, sir.

Q Now, Mr. Bradley, you recall that you testified yesterday as to a conversation you had with Mr. Dowd in late 1967; is that correct, sir?

A Yes.

Q He informed you of a $1,700 contribution increase; is that correct, sir?

A Yes.

Q And you participated in this group of participating officers --

MR. COHN: Your Honor, I object to this. The jury heard it all.

MR. KATZBERG: All I --

MR. COHN: I know what he wants to do. There is no reason for him to ask it.

THE COURT: All right, let's go to the next question.

Q Did you agree to participate at that time, sir?

A Yes, I did.

Q What did you tell Mr. Dowd?

A I told --

MR. BANNIGAN: Objection. Asked and answered

THE COURT: Yes.

MR. KATZBERG: I want to elicit this. It hasn't been fully covered yesterday. And I want to cover it today. It's perfectly permissible. What did he tell Mr. Dowd?

MR. COHN: He asked that yesterday. And I object, your Honor. This is all repetitive.

THE COURT: I think we had it yesterday.

MR. KATZBERG: I don't think it was fully covered, most respectfully. I would like to --

THE COURT: Let's see the --

MR. RYAN: We have the record here.

THE COURT: All right, go ahead. Let's hear what he said.

THE WITNESS: Did I have a conversation with Mr. Dowd? Yes.

Q Referring to the conversation with Mr. Dowd, when you agreed to participate --

A Right.

Q -- what did you say to him in that connection?

A I told him at the time that if it was -- if we had to do it, we had to do it, period. I'd go along with it.

Q Thank you, sir.

Now, you told us thereafter, after the conversation with Mr. Dowd, that you spoke to Mr. Clifford; is that correct, sir?

A Yes.

Q Now, what if anything did you say to Mr. Clifford about time?

MR. NAFTALIS: That's been asked and answered.

THE WITNESS: Very short.

THE COURT: I thought that was --

MR. NAFTALIS: How many times are you going to bring it up? He's allowed to do it once, not five times.

THE COURT: I don't think you have the right to

go over testimony. Absolutely not.

All right.

Q Now, after these conversations, did you receive the $1,700 salary increase?

A Yes, I did.

Q And yesterday you identified Exhibit 4, the notation, 11/27/67 as that $1,700 contribution increase; is that correct, sir?

A Yes sir.

Q Now, you may also recall that I asked you yesterday about conversations with Mr. Vandermark and --

MR. NAFTALIS: I object to anything that he recalls about what he asked yesterday. He can ask a question as to what someone said, what someone didn't say. He doesn't have to repeat.

THE COURT: All right, go ahead.

THE WITNESS: I am sorry.

Q Did there come a time in December of 1970 when you had a conversation with Mr. Vandermark with respect to Mr. Hadley and Mr. Mause?

A Yes.

National Bank?

A Yes.

Q Approximately when was that?

A March of 1970.

Q Now, did there come a time when you actually left the Security National Bank?

A Yes.

Q Approximately when was that?

A March of '71 actually.

Q Now, between the time of this original letter of resignation and the time you actually left the bank, did there come a time when you had a conversation with Mr. Clifford on the subject of salary?

A I had a conversation with Mr. Clifford and Mr. Travers. Not Mr. Clifford alone.

Q Where did this conversation take place?

A In Mr. Clifford's office.

Q Approximately when did this conversation take place?

A Probably the early part of December of '71 -- '70. I am sorry. 1970.

Q Now, you indicated that Mr. Travers was also present?

A Yes.

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Q Was there anyone else present other than Mr. Travers, Mr. Clifford and yourself?

A His secretary may have been. She has a desk there. But I don't recall.

Q Now, what was said and by whom?

A At that point I was told that I was to be reduced in salary. I was no longer the senior lending officer of the bank.

MR. NAFTALIS: May the witness state who told him that.

THE WITNESS: Yes. I am leading up to it.

MR. NAFTALIS: I am sorry. I didn't mean to interrupt you.

THE COURT: All right, go ahead.

THE WITNESS: The topic of the conversation was the fact that I was not the senior lending officer, which I knew I wasn't. And that therefore my salary was being reduced in the amount of $7,000. I think it was $7,000 a year. Both Mr. Travers and Mr. Clifford were in the room. And to the best of my recollection, it was Mr. Travers that said that.

Q What if anything did you say in response to that, sir?

A Well, I asked at that point, did the

contribution -- and I used the words, $1,800, does that contribution raise, or the raise for the contribution of $1,800, was that included.

Q What if anything was said to that.

A I was told that it was not, that I was to make the payments.

Q Who told you that?

A Mr. Clifford told me that.

Q Now, thereafter, did you continue to contribute, sir?

A I made one more payment. And I think that was a check. I think you have the check. $200. I don't know the date. But it was after that conversation. And it was to Eileen Pace or Peace or something like that.

Q Let me show you Exhibit 67 that you identified yesterday. Looking at the top check, does that refresh your recollection as to which check you are talking about?

A Yes. Eileen Peace, treasurer, $200, January 13th.

Q Was that the last contribution that you wrote?

A Yes.

MR. KATZBERG: At this time, the Government would offer into evidence what has previously been marked as Exhibit 67 for identification.

MR. NAFTALIS: Can we see it, please.

THE COURT: All right.

MR. KATZBERG: May we have a brief side bar? I want to -- there is something I want to bring to counsel's attention.

(The following took place at the side bar.)

MR. KATZBERG: What has been identified by the witness in Exhibit 67 is the check that he wrote pursuant to this contribution club. I have offered this into evidence. Mr. Bradley also furnished me with a number of checks that are in this white envelope which he could not positively say that he -- he may or may not have. He is not sure. I just want to make sure that counsel is aware of the existence of these checks if they want to use them for any purpose whatsoever. Just so that they know there were other checks produced that this man could not identify as the ones that he may -- that he may or may not have written them. I just want the record to be clear and counsel to be aware of the existence of those documents. That's all.

MR. RYAN: Your Honor, since Mr. Powell had nothing to do with the Travers-Bradley conversation, I didn't object. But I have a continuing objection as

to the --

THE COURT: Yes.

MR. COHN: And that goes for Dowd.

MR. BANNIGAN: And the bank.

THE COURT: And the bank naturally.

MR. PATTISON: Again, I don't want to raise a sole issue, but we would ask leave Monday to get in a memo of law.

THE COURT: Sure.

MR. PATTISON: We feel the bank is in fact bound by the statements of Clifford, Dowd and --

THE COURT: Yes.

MR. BANNIGAN: I agree. And there is no memo of law necessary.

THE COURT: Sure. There is no question --

MR. PATTISON: That was Mr. Clifford's statement.

MR. KATZBERG: That he must continue to make the contributions.

MR. BANNIGAN: I have never said that I objected to those -

THE COURT: He doesn't object to that. I understand.

MR. PATTISON: May I ask that the jury's instructions which have been rendered up until now are

not the --

THE COURT: No, that's not what I have been instructing the jury about. The instructions to the jury was that the bank statements being made in reference to the bank at this time are not to be accepted. But if they are connected, then at that time the bank will be part of the whole thing.

MR. BANNIGAN: Exactly.

MR. PATTISON: I believe that they think the --

THE COURT: At this point --

MR. BANNIGAN: I disagree.

THE COURT: Well, let's wait a little while.

MR. PATTISON: The chairman of the board is saying -- I don't know --

MR. BANNIGAN: Is it that you want the Judge to say they have been connected? Do you want him to make that finding? Is that what you want?

MR. PATTISON: As far as --

MR. BANNIGAN: I oppose such an instruction.

MR. PATTISON: As far as the evidence goes, yes. And that is the proper --

THE COURT: I am not going to do it.

MR. BANNIGAN: I don't think any judge would tell the jury that there's been a connection.

THE COURT: I will now say it is a question of fact. I will tell them at the proper time it is a question of fact whether the bank through its officers was part of this scheme and design.

MR. BANNIGAN: Thank you.

MR. PATTISON: Fine.

THE COURT: Sure.

(End of side bar.)

MR. KATZBERG: Judge, at this time the Government would offer Exhibit 67, the check that Mr. Bradley has identified, into evidence.

MR. BANNIGAN: No objection from the bank.

MR. NAFTALIS: No objection.

THE COURT: All right.

THE CLERK: Government Exhibit No. 67 received in evidence.

(So marked.)

MR. KATZBERG: I have no further questions of this witness, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good morning, Mr. Bradley.

A Good morning.

Q Now, I believe you testified on your direct examination that you had a conversation with Mr. Clifford alone?

A Yes.

Q Which related to contributions?

A Yes.

Q I take it, that was a very short, very brief conversation?

A Very brief.

Q Is that correct?

A Very brief.

Q And you told Mr. Clifford -- why don't you repeat the conversation.

A To the best of my recollection, I just happened to say to Mr. Clifford that David explained the plan to me and I didn't like it.

Q That was all?

A That was all I said.

(Continued next page.)

Q What did he say?

A Mr. Clifford just came back and said, "Well, it's for the good of the bank."

And that's all he said.

Q The conversation was that short and that quick?

A That's all it was.

Q No conversation about the details of the plan?

A Absolutely not.

Q No conversation about the mechanics of the plan?

A No.

Q No conversations about who would receive the contribution?

A No.

Q No conversation about what, where, how, the people would pay for their contributions?

A No.

Q Nothing at all?

A No. That was all we said.

Q Now, your area of concern was lending; is that correct?

A Yes.

Q And during the years you were at the Security National Bank, you worked with Mr. Clifford in the lending area?

A I worked with Mr. Clifford and the other officers. Yes.

Q I didn't mean to imply that you and he were the only guys who didn't work. Or maybe it was. I don't know. I'm sure there were lots of other people who did.

A Right.

Q All I was trying to bring out is, is it fair and honest to say that both you and Mr. Clifford had occasion to work together on loans to various business transactions relating to the Security National Bank?

A Yes.

Q And during those years that you worked together with Mr. Clifford, you have had an opportunity to observe Mr. Clifford's practices?

A Yes.

Q How he conducted his business?

A Yes.

Q And is it fair and honest to say that Mr. Clifford's practice was that he was an extremely cautious man who wanted to make sure that all the requirements of law were observed in all of the business transactions that you worked with him on?

A Yes.

Q And he wanted to make sure that all the other

people who he worked with, such as yourself -- and I am doing this -- I am asking this question based on your personal observations -- that he observed all the requirements of law?

A Right.

Q And if there was any question that anybody raised, he would refer the matter to the bank's attorney; is that correct?

A We all did. Yes. Mr. Clifford also. Yes.

Q Now, you indicated, Mr. Bradley, that there came a time in -- I think December, 1970, that you had a conversation with Mr. Clifford and Mr. Travers and perhaps Mr. Clifford's secretary might have been in or out of the office?

A Right.

Q And during the course of that conversation, you were told that you'd receive a salary reduction; is that correct?

A That's right.

Q And that you were no longer the Senior Lending Officer of the bank?

A No. I s[illegible] I was -- I said I was not the Senior Lending Officer.

Q I'm sorry.

A I was the Senior Lending Officer at the bank at that time. I had asked to be relieved of that quite some time

ago. And there were other people in there.

Q I'm sorry. I stand corrected.

In any event, you were asked -- you were told that you would have to have a salary reduction?

A Right.

Q And I think you testified under direct examination from the prosecutor that the person who told you you were to have a salary reduction was a man by the name of Mr. Travers?

A To the best of my recollection, it was Mr. Travers, yes, sir.

Q Not Mr. Clifford?

A No. To the best of my recollection.

Q Then I think you also testified that you raised a question about whether or not you should continue to make contributions and you were told you should?

A Yes.

Q As you sit here today, can you swear who told you that?

A As I said before, to the best of my recollection, there were two gentlemen in the room. Both were talking.

Q Can you swear as to which of the two gentlemen told you that?

A No.

MR. KATZBERG: Can we specify which conversation

we are talking about?

MR. NAFTALIS: Talking about the conversation as to whether he continued making contributions.

MR. KATZBERG: The 1800 --

MR. NAFTALIS: Absolutely. Yes.

THE WITNESS: As I say, to the best of my recollection, it is Mr. Clifford.

Could I swear to it? No.

Because I couldn't tell you what time the conversation happened that day. It was in the morning.

Q As you sit there under oath now, you could not swear which of those two gentlemen told you; is that a correct statement?

A No.

Q Is that correct or incorrect?

A That's correct. Because I keep saying, to the best of my recollection. In my mind, it was Mr. Clifford. But --

Q But you could not swear to it?

A I couldn't swear to it right now. No.

MR. NAFTALIS: Your Honor, may I have a moment to check with one or two of the people here?

THE COURT: Sure.

(Continued on next page.)

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1 A 332 Bradley - cross-Naftalis

BY MR. NAFTALIS:

Q Now, Mr. Bradley, at the time you worked with the Security National Bank, did you ever attend any dinners which were run by any political organizations?

A Well, we attended many luncheons and dinners. I know we covered all charitable affairs.

If you are talking about a political luncheon, the only one I was at, the only one I can recall right now, was the Humphrey luncheon at the Town House.

We went up to it but I was called out in 10 minutes. I never had my food.

Q Well, we will get you out in time so you can get some lunch today.

You indicated you went to various charitable luncheons and dinners and affairs.

A Yes, and I think I attended the New York State Republican dinner at one time.

Q Civic affairs and functions?

A Yes.

Q And take it your attendance at the charitable affairs, the civic affairs and that State Republican dinner or affair you referred to was in connection with your duties as you viewed them and your responsibilities as an officer of Security National Bank?

A Yes.

Q And I take it it is fair and honest to say that it was in the interest of the bank for its officers to be active in these kind of functions and therefore for the banks named to be known to the people who attended these functions?

A Over the years I attended, I met many bankers who attended.

Q As you pointed out, Security National Bank officers were not the only bankers at those functions?

A No.

Q Bankers from all sorts of banks were there?

A Yes.

Q Franklin, you remember Franklin, they must have had people there at one time or another?

A Quite definitely.

Q National Bank of North America, which used to be the old Meadowbrook Bank?

A Yes.

Q In any event, those various charitable and political dinners provided an opportunity for the bank officers to meet people, to meet potential clients, who could be helpful to the bank?

A That's why we always went to them.

Q Community leaders?

A Yes.

Q Sometimes youhave calling cards, like I have a calling card, with an address and phone number, and sometimes you'd hand them out to people?

A If someone asked me for it, yes.

Q And I take it that other people from other banks would do the same thing in the performance of their honest and legitimate duties?

A I imagine they would, yes.

Q Mr. Bradley, when you went to these various charitable and civic dinners, who paid for them?

Did you pay for the tickets or did the bank pay for the tickets or did someone else pay for the tickets, to the best of your recollection?

A To the best of my recollection, I really wouldn't know. I couldn't answer your question honestly because the tickets, my secretary would have them or they would be sent to me for the dinners. I would not know where they came from.

Q And do you recall whether or not you paid for them?

A No, I didn't pay for them.

Q Someone else did, that was for sure?

A That's right.

Q In connection with the political dinners, to the best of your knowledge and belief, the funds for the tickets came out of the contributions club that you and many of the other senior officers were contributing to; is that correct?

A I couldn't answer your question. I didn't know.

Q That was your assumption, wasn't it, during the time you were there?

A Probably was, but as I say, I didn't know where the money came from. That was not my area to worry about.

Q Now, I think you indicated that you had had no relationship with the Long Island Public Affairs Club; is that correct?

A That's right.

Q And I want to show you a check which was part of your checks which you made out in connection with the contributions you made.

A Yes.

Q That one indicates, does it not, that that was deposited in the Long Island Public Affairs Club?

A Yes.

Q That's what the endorsement says on the bank?

A Yes.

Q After that check cleared the bank, that along with other checks that cleared the bank that month, were returned to you?

A Yes.

Q Therefore, had you had any desire or interest or opportunity to look on the back of your check, it would have said: Long Island Public Affairs Club?

A That's right.

Q Did you ever learn that that club only lasted a few months?

A No.

Q And then was changed to another way of making these contributions in accordance with the requirements, where they were given to Mr. Chadwick?

A I guess you left the bank, that was the problem.

A I couldn't tell you that. Except I got the call from Chadwick on sending the check to -- that Eileen Pace is the one, to make it payable to her, but I didn't know about the club, no, as far as that Long Island club, whatever it was.

Q In any event, you left the bank in March of

1971?

A Yes.

Q And therefore were not involved in any way in any other contributions at that time?

A No

Q As a matter of fact, in 1971, during the first three months that you were there, you only made one contribution?

A That's all.

Q Which is less than you would normally make?

A That's exactly right, because nobody called me for any more.

Q In other words, nobody bothered you so therefore, that's all you did?

A That's right.

MR. NAFTALIS: I have nothing else, your Honor.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Bradley, I represent Dave Dowd. I'd like to ask you a few questions.

A Yes.

Q How long did you work with Dave Dowd at the bank?

A From '67, March of '67 or April, when I joined the bank until I left the bank in '71.

Q Would you say you worked rather closely with him on occasions?

A When I first started, yes, we both were in credit --

Q In the early years; is that correct?

A Yes.

Q Did you have occasion to work with him for example on loans that you may have been involved with from time to time in the early years?

A We discussed them, yes.

Q So that when you and David Dowd has this conversation about the salary increase that you were going to get, you had had prior dealings with Dave Dowd; is that correct? That wasn't the first time you ever spoke to him, was it?

ROBERT E. VANDERMARK, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Vandermark, by whom are you employed?

A Chemical Bank.

Q When did you begin working for Chemical Bank?

A January 1975.

Q And prior to that time by whom were you employed?

A Security National Bank.

Q When did you start to work for the Security National Bank?

A Through a merger in 1958.

Q And that was when you first were technically an employee of Security?

A Yes.

Q Now, in 1958 what was your title at the Security National Bank?

A I was a credit analyst.

Q Is that the position of an officer?

A No, sir.

MR. NAFTALIS: I didn't get the date.

MR. KATZBERG: 1958.

MR. NAFTALIS: '58?

MR. KATZBERG: Yes.

Q Now, did there come a time after 1958, when you received a number of promotions?

A Yes, sir.

Q Could you briefly list those promotions for us, please?

A Assistant manager, assistant vice president, vice president, administrative vice president and senior vice president.

Q Now, can you tell us essentially what your duties were at the Security National Bank?

A My duties were primarily as officer in charge of the loan administration function of the bank.

Q I want to direct your attention to the year 1967, specifically to the latter part of the year. What was your title at that time?

A Vice president.

Q And who was your immediate superior at that time?

A Either Abe Honan or Bob Bradley.

Q Now, what was Mr. Bradley's title at that

time?

A I believe he also was a vice president.

Q Now, who did Mr. Bradley report to?

A Mr. Clifford.

Q Again, focusing in on this period of time, late 1967, November or December of '67, where was your office located physically at that time?

A In Huntington.

Q Where was Mr. Bradley located at that time?

A In Huntington.

Q Now, I want to direct your attention to this same period of time. approximately November of 1967, did there come a time when you had a conversation with someone on the subject of political contributions?

A Yes, sir.

Q And with whom did you have this conversation?

A Mr. Dowd.

Q What is his first name, please?

A David Dowd.

Q Where did this conversation take place?

A In my office.

Q In Huntington?

A Yes, sir.

Q Was anyone else present in your office other

than yourself and Mr. Dowd at this time?

A No, sir.

Q Who initiated this conversation?

MR. NAFTALIS: May I have an objection and an instruction this is not binding on Mr. Clifford, this conversation --

THE COURT: Not at this time. I would rather you reserve on motions of that type until the end of the testimony, then we will determine it.

MR. NAFTALIS: Fine, your Honor, thank you.

MR. RYAN: Yes, your Honor.

BY MR. KATZBERG:

Q Was this conversation initiated by you or Mr. Dowd?

A By Mr. Dowd.

Q Can you tell the ladies and gentlemen of the jury what Mr. Dowd told you, to the best of your recollection?

A Mr. Dowd approached me and explained to me that over the course of years, directors had been, out of their own pocket and own funds, purchasing tickets to political dinners, parties, et cetera and that with the drive to increase the bank's municipal business, it was no longer possible for the directors to continue doing it themselves and that I was one of a select group of key

officers who were being asked to participate and make political contributions.

Q Now, was anything said about who made the selection of these officers?

A To the best of my recollection, no specific name, just top management.

Q Now, at that time, late 1967, who was the top management of the bank?

A Mr. Clifford.

MR. NAFTALIS: I object to that charge. Either we will stipulate as to who held what job --

MR. KATZBERG: May we approach the bench?

THE COURT: I think you ought to rephrase the question. Merely because he used the word you shouldn't use it in your question. Why not just ask him the question.

BY MR. KATZBERG:

Q Was that the phrase that was used by Mr. Dowd to you, sir?

A To the best of my recollection.

THE COURT: That's what he says. All right.

Q To your understanding, who was top manager at that time?

MR. NAFTALIS: I object, irrelevant.

THE COURT: His understanding is immaterial.

Q Were you familiar with the structure of the bank at that time?

A Yes.

Q Was Herman Maas an officer of the bank at that time?

A Yes.

Q What was his title?

A Chairman of the Board.

Q Can you describe to us, based on your knowledge, what role Mr. Maas actually played in the bank at that time?

MR. COHN: I object.

THE COURT: No, I will allow that.

A In November of 1967, Mr. Maas was chairman of the bank but to a large degree fairly inactive in its daily affairs.

Q Now, was anything said in the course of the conversation with Mr. Dowd how much money you were to contribute?

A Yes. In discussing the matter he indicated to me that I would be asked to contribute $100 a month in connection with making the political donations.

Q Was anything said about raises?

A Yes, sir. I was told that if I agreed to participate, I would receive a salary adjustment of approximately $1,700, 1,200 to cover the monthly contributions and the $500 to cover the tax consequences.

Q As a result of receiving the $1,700 salary increase for the contributions, how much did the contributions actually cost you?

MR. NAFTALIS: I object to what it would cost him or wouldn't cost him. He is allowed to elicit what Mr. Dowd said to him. He is not to characterize it.

THE COURT: Not necessarily, proceed.

A In essence, nothing.

Q To whom were these contributions to be made physically by you, sir?

A I was told to make the contributions to Betty Jaeger.

Q Was there any discussion at this time on the question of legality?

A Yes. I asked Mr. Dowd if this thing was legal. I was told it was and that it had been reviewed with counsel.

Q Was any specific attorney's name mentioned?

A No, sir, it was not.

Q After being told this, did you agree to participate, sir?

A Yes, halfheartedly.

Q Was anything else said during the course of this conversation?

A Yes, I was told that it was a confidential matter and was not to be discussed with anyone.

Q Did you keep it confidential?

A Yes, I did.

Q Did there come a time when you actually received the special $1,700 salary increase for the contributions that Mr. Dowd promised you?

A Yes, I did.

Q And approximately when was that, sir?

A The latter part of 1967.

Q Mr. Vandermark, I want to show you at this time what has been previously marked for identification as Exhibit No. 46, sir. I want you to look at Exhibit No. 46 and I want you to tell us if you see on that exhibit the contributions increase you just referred to receiving?

A Yes, I do.

Q What is the amount, sir?

A $1,700.

Q What is the date?

A November 27, 1967.

Q Now, again with reference to Exhibit 46, there is information contained on that document. Isn't that true, sir?

A Yes.

Q To the best of your knowledge, are all the entries on that exhibit, do they represent a fair and accurate description of all your salaries and titles at the Security National Bank?

A Yes, sir.

MR. KATZBERG: At this time the Government would offer Exhibit No. 46 which is currently marked for identification, into evidence.

MR. NAFTALIS: No objection.

MR. COHN: No objection.

THE CLERK: Government's Exhibit No. 46 received in evidence.

BY MR. KATZBERG:

Q Now, you told us that the $1,700 salary increased on 11/27/67. Is that correct?

A Yes.

Q Again referring to Exhibit No. 46 now in evidence, did you receive another salary increase one month prior to that date?

A Yes, sir.

Q What was the date of that increase?

A October 30th.

Q And how much money did you receive a month before you received the $1,700?

A $5,000.

Q And was that -- what was the purpose of that increase, sir?

A It was in connection with my promotion to administrative vice president?

Q Was that based on merit?

A Yes.

Q Did that have anything to do with contributions?

A No, sir.

MR. COHN: If it had nothing to do with contributions, may I inquire why this is being developed?

THE COURT: Yes. What has it got to do about it?

MR. PATTISON: I would be glad to but not in the presence of the jury.

THE COURT: All right. We will send the jury out now and I will take the side bar.

(Side bar discussion out of hearing of the jury.)

MR. KATZBERG: The reason that I--obviously the document speaks for itself and it's in evidence but the reason I pointed to a $5,000 salary increase, less than one month before the $1,700 contribution increase, it is admissible evidence to show that the $1,700 increase to help prove that was a special increase, having nothing to do with merit, when the guy just received less than 30 days before that less than $5,000.

MR. PATTISON: And may I go on, that had it been felt that the officers could and should be -- should voluntarily pay out of their own funds monies to buy the tickets, contributions, et cetera, he could just as well have been approached and say, you just got a large raise, would you feel now you would be able to, out of your own funds and nothing was said along those lines, therefore I feel it's relevant.

THE COURT: All right. I will allow it. We will take a ten minute recess.

(Recess taken)

THE COURT: Bring the jury in.

(The jury took its place in the jury box.)

THE COURT: All right, are you ready to start again?

Bring your witness in.

(Mr. Vandermark then resumed the witness stand.)

THE COURT: All right.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KATZBERG (Continued):

Q Now, Mr. Vandermark, subsequent to your receiving this contribution's raise on 11/27/67, did there come a time when you began to make contributions?

A Yes.

Q Now, when you first started making these contributions, what form did these contributions take, sir?

A Cash.

Q And to whom did you give the cash to?

A Betty Jaeger.

Q And for approximately how long a period of time did you give the cash to Mrs. Jaeger?

A Oh, probably a little over a year.

Q Now, how would you physically transmit the cash

to Mrs. Jaeger?

A Since we were both in the same office, when I cashed my check I would walk over and I'd hand it to her or put it in an envelope and leave it on her desk.

Q Now, when you put it in an envelope, did you mark the envelope in any way?

A I'd mark her name on it and marked it "confidential," and put my name on it.

Q Now, you indicated that you paid by cash for approximately a year; is that correct?

A Yes, sir.

Q Thereafter, how did you make these contributions?

A By check.

Q And how did it come about that you started to use checks?

A I don't recall now whether Betty moved to a different office location than the one I was, but any way, it wasn't convenient to deliver cash, so I wrote a check.

Q Thank you, sir.

Now, with reference to these checks, I want to show you what has been pre-marked for Identification as Exhibit 68. I want you to look at the contents of Exhibit 68 and tell us whether or not you recognize it.

A Yes, these are my checks.

Q And are those the checks that you wrote pursuant to this political contributions club?

A Yes, sir.

Q Now, does that include not only Exhibit 68 but separately marked checks as Exhibit 68-A, B, C, D, E, F and G, sir?

A Yes, sir.

MR. KATZBERG: AT this time, your Honor, the Government would move Exhibit 68, 68-A through E -- I am sorry, through G, in Evidence.

THE COURT: All right. Any objection?

MR. COHN: No objection.

MR. BANNIGAN: No objection.

MR. RYAN: One question, if I may.

VOIR DIRE EXAMINATION

BY MR. RYAN:

Q Mr. Hill had nothing to do with the checks that are being marked, did he?

MR. KATZBERG: I object to that as improper voir dire.

THE COURT: That is not voir dire.

MR. RYAN: Very well.

THE CLERK: Government's Exhibit 68, 68-A through G, inclusive, received in Evidence.

DIRECT EXAMINATION

BY MR. KATZBERG (Continued):

Q Now, originally, when you started to write the checks, what is the date of the first check?

A February 28, 1969.

Q And prior to that time, youwere paying cash; is that correct?

A Yes, sir.

Q Who was the first check drawn to in February of '69?

A Betty Jaeger.

Q Now continue to look through that exhibit and tell us the last date of the check drawn payable to Betty Jaeger.

A August 29, 1970.

Q And all of these checks in between were all drawn to Mrs. Jaeger; is that correct?

A Yes.

Q Now, during this period of time from the time you first started paying cash in 1968 through the time you were making checks payable to Mrs. Jaeger through August 29th of 1970, did you ever know where your money, where the money was going once you gave it to Mrs. Jaeger?

A Specifically, no.

Q Did you ever ask?

A No.

Q Now, were you ever told by anyone that you were a member of the Long Island Public Affairs Club?

A No, sir.

Q Were you ever told by anyone that any of your money was going to the Long Island Public Affairs Club?

A No, sir.

Q Any of the monies for contributions, I mean?

A No, sir.

Q I'm going to show you the endorsements on the last three checks made payable to Betty Jaeger, July 30, 1970, August 14th and August 29th, 1970.

Now, tell us what those endorsements read.

A "For deposit Long Island Public Affairs Club, Betty Jaeger, Assistant Treasurer."

Q Thank you, sir.

Now, the last one of the Betty Jaeger checks is August 29th of 1970; is that correct?

A Yes, sir.

Q Now, the very next check, to whom is that check drawn?

A The Southhampton Republican Committee.

Q What is the date of that check?

A October 1, 1970.

Q How did it come about that you stopped drawing checks payable to Betty Jaeger and began drawing checks to individual political organizations?

A Sometime between the date of my last check to Betty Jaeger and the first one here, I was told that there was a change in the procedure and instead of making payments to Betty Jaeger I would henceforth get calls from Arthur Chadwick who would tell us whom to make the checks out to.

Q And who told you this, sir?

A To the best of my recollection I believe it was Mr. Dowd.

Q David Dowd?

A Yes, sir.

Q Did you ask him why there would be a change in this procedure?

A I don't believe so.

Q Did he tell you why?

A No, sir.

Q Now, subsequent to this conversation, did there come a time when Arthur Chadwick did indeed contact you?

A Yes, sir.

Q And did he contact you on a regular basis thereafter?

A Fairly regular.

Q And what would he tell you on these occasions, sir?

A He would call up and ask me to write a check to a party or a particular individual for a specific amount.

Q Now, is it fair to say that each and every one of those checks that you wrote subsequent to October, from October 1, 1970 on, were written at Mr. Chadwick's instructions, sir?

A Yes, sir.

Q How would you physically transmit the checks to Mr. Chadwick?

A I would put them in an envelope and send it to him through the inter-office system marked "Confidential."

Q Now, other than those cancelled checks which we have already identified and which are now in evidence as Exhibit 68, were there any other records that you maintained of the contributions that you made pursuant to this contributing organization?

A Yes, sir.

Q And what records were those, sir?

A I maintained a savings account so I wouldn't get the money mixed up with my own.

Q At this time I would like to show you what has

been pre-marked as Exhibit 69 for Identification.

I want you to look at that, sir, and tell us whether or not you recognize it.

A Yes, it is a Xerox of my passbook.

Q Is that the record you just referred to?

A Yes, sir.

Q Do you have the original with you here, sir, today?

A Yes, sir.

(At this point the witness withdrew from a side pocket a document.)

MR. KATZBERG: May I ask the Court's and counsels' permission to utilize the Xerox copy rather than the original record?

MR. NAFTALIS: No objection, your Honor.

THE COURT: Yes.

MR. KATZBERG: Thank you.

Q Now, would you describe the manner in which you utilized this bank account for contributions?

A When I cashed my check, if I was making contributions, I would place $50 in the savings account and I would leave it there until such time as I was requested to make payment, and I would then draw it out of the savings account and put it into my checking account and write a check.

Q And this Xerox copy of your savings account, does it accurately reflect the deposits and withdrawals that you made in that connection?

A Yes, sir.

MR. KATZBERG: At this time the Government would move Exhibit 69 in Evidence.

MR. BANNIGAN: No objection from the bank.

MR. NAFTALIS: No objection. May I just look at it for a moment, if you are not perusing it?

MR. KATZBERG: Sure.

(Document handed to Mr. Naftalis.)

MR. COHN: May I see it?

MR. KATZBERG: You have seen that.

MR. COHN: I haven't seen it, Mr. Katzberg, please.

(Document handed to Mr. Cohn.)

MR. COHN: I have no objection.

Do you have the cover sheet of this account?

MR. KATZBERG: He has it.

MR. COHN: May I take it?

MR. KATZBERG: May I have the original of this, if your Honor please?

THE COURT: Show him the book.

(The witness then handed the passbook to Mr. Cohn.)

MR. COHN: All right, it i[illegible] savings account, and may the record show since the exhibit doesn't have the cover, that this is a photocopy of a passbook of a savings account in the Security National Bank of the Melville Office.

(At this point Mr. Cohn handed the exhibit back to Mr. Katzberg.)

MR. KATZBERG: Thank you.

MR. COHN: Thank you.

THE COURT: Any objection now?

MR. COHN: No objection.

THE CLERK: Government's Exhibit No. 69 received in Evidence.

(Continued on next page.)

A 360 Vandermark-direct

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BY MR. KATZBERG:

Q Mr. Vandermark, you just told us that you maintained a savings account so as not to confuse the money; is that correct, sir?

A Yes.

Q Will you explain to the ladies and gentlemen of the jury what you mean by that?

A Well, since I knew I had to give the money out, I put it in a savings account to keep it from being mingled with my own checking account money and used it for those purposes.

Q Thank you, sir.

I notice that among the checks contained in the exhibit of your checks, Exhibit No. 68, there is a check -- there are two checks drawn payable to William Shea, and I will show you those checks now, sir, and the first date is December 28, '70 and the other check is January 12, '72.

Will you look at those checks, sir, please?

A Yes.

Q Were those checks drawn to you as per Mr. Chadwick's instructions, sir?

A Yes, sir.

Q Did you ask Mr. Chadwick why you were drawing a check payable to Mr. Shea?

A Yes,sir, and I was told it was to reimburse Mr. Shea for a contribution which he had made.

Q Now, Mr. Vandermark, do you know an individual by the name of James Brogan?

A Yes, sir.

Q And did Mr. Brogan work for the bank?

A Yes, sir, he was formerly personnel director.

Q Was he an officer, sir?

A Yes, sir.

Q And whom did he work for?

A He reported to Mr. Powell and Mr. Clifford.

Q And do you know an individual by the name of William Hadley, H-a-d-l-e-y?

A Yes, sir.

Q And did he work at the bank?

A Yes, sir.

Q What was his title?

A Mr. Hadley was a vice prsident who worked in the loan review group, which was a part of my function.

Q Whom did he report to?

A Through me to Mr. Bradley.

Q Do you know an individual by the name of George Mause?

A Yes, sir.

Q And was he likewise an officer of the bank?

A Yes, he was, he was in charge of the accounts receivable and the small business loan department which was a part of our group and reported through me to Mr. Bradley.

Q I'm sorry, I missed the last part.

A I say he reported through me to Mr. Bradley.

Q Now, I want to direct your attention to approximately December of 1970.

Did there come a time when you had a conversation with Mr. Brogan about Mr. Hadley and Mr. Mause?

A Yes, I did.

MR. RYAN: Let me register my objection to conversations between Mr. Brogan and Mr. Hadley and Mr. Mause.

THE COURT: I did not hear you.

MR. RYAN: I must object to a conversation between Mr. Brogan, Mr. Hadley and Mr. Mause, three people who are not in this Courtroom.

MR. KATZBERG: I think counsel understands that the conversation is between Mr. Brogan and Mr. Vandermark.

THE COURT: I will allow it.

A Yes.

Q Thank you, sir.

Now, was this conversation between yourself and Mr. Brogan on the phone or was it in person?

A Telephone.

Q And did you call Mr. Brogan or did he call you?

A No, he called me when he was unable to get ahold of Mr. Hadley.

Q And what if anything did he say to you at this time?

A He told me that Mr. Hadley, in Mr. Hadley's absence, that some increases had been granted to Mr. Hadley and Mr. Mause and he asked me if I would contact each of the individuals and explain to them about the increases.

Q And how much were these increases, sir?

A Approximately $3,700, part of which was merit increase and part was for political contributions.

Q And how much did Mr. Brogan say was for merit and how much was for the club?

A I believe $2,000 was the merit raise and $1,700 for the contributions.

Q And that would be one combined increase; is that correct, sir?

A Yes, sir.

Q It would begin at one time --

MR. RYAN: I take it that that conversation with

Mr. Brogan is taken with some connection that has to be established later on or I object to it.

THE COURT: Whatever it may be.

All right.

MR. RYAN: All right.

MR. KATZBERG: May I continue, your Honor.

THE COURT: Yes.

Q Now were both Mr. Hadley and Mr. Mause receiving the $3,700 salary increase?

A Yes, sir, each received the same.

Q What did Mr. Brogan ask you to do at this time?

A He asked me to contact the individuals and advise them of their merit increase and also advise them that they had been selected to participate in political contributions. He asked me to explain oit to them and to get back to him with the results of my conversation after I had the meetings.

Q Now, did Mr. Brogan tell you to tell them anything else at these meetings?

A Anything else as to Mr. Hadley and Mr. Mause?

Q Yes.

A No tthat I recall.

Q Did there come a time when -- withdrawn.

Did Mr. Brogan indicate who had chosen

Mr. Hadley and Mr. Mause to participate?

A No, he did not.

Q Did you ask him?

A No.

Q Now, did there come a time when you did speak to Mr. Hadley?

A Yes, sir, there was.

Q Did there come a time when you did speak to Mr. Mause in this connection?

A Yes, sir.

Q Did you speak to them separately or together?

A Separately.

Q Now, approximately when did you speak to Mr. Mause?

A Either the same day or the following day after Mr. Brogan's call.

MR. COHN: Your Honor, may we have some date or some time specifics as to month and week.

MR. KATZBERG: I believe he already indicated as December 1970.

MR. COHN: That is all I want.

MR. KATZBERG: Is that correct?

THE WITNESS: I believe that is correct.

Q Now, when you spoke to Mr. Mause, where did you

speak to him again, sir?

A In my office.

Q Was anybody else present?

A No, sir.

Q And what did you tell him.

MR. BANNIGAN: Objection -- no, I withdraw the objection.

THE COURT: Go ahead.

Q What did you tell Mr. Mause?

A I called Mr. Mause and advised him of his merit increase and also advised him of the additional $1,700 for political contributions.

Q Did you say --

MR. COHN: If your Honor please, I think the question to the witness was what did he tell him.

May we have the witness tell us the words, as best he can recall.

THE COURT: Is that the best you can recall?

THE WITNESS: That is as best I can recall.

THE COURT: That is the best he can recall.

Q Did you say anything about how the contributions were to be made?

A I explained to him how I was doing it and he would receive calls from Mr. Chadwick periodically requesting

contributions.

Q And did you explain to him how the $3,700 combined increase broke down?

A Yes, I did, $2,000 was per merit increase, the $1,700 covered the contributions, $1,200 was $100 a month and the $500 was the tax consequence.

(Continued next page.)

Q Now, did there come a time when you spoke to Mr. Hadley?

A Yes, there was.

Q And approximately when did you speak to Mr. Hadley?

A Either shortly before or shortly after I had spoken with Mr. Mause.

Q Is this still December of 1970?

A Yes, sir.

MR. RYAN: I am going to object to any conversation between Mr. Vandermark and Mr. Hadley as not binding at all on John Powell.

THE COURT: I will allow it.

Q And where did the conversation between yourself and Mr. Hadley take place?

A In my office.

Q Was anybody else present?

A No, sir.

Q And what did you tell Mr. Hadley?

A I explained to Mr. Hadley like I had explained to Mr. Mause that he had been given a $2,000 merit increase and there was also an additional $1700 adjustment in connection with making political contributions, and I asked him if he would be willing to participate.

Q Now, subsequent to your conversation with Mr. Hadley and Mr. Mause, did there come a time when you reported back or spoke to Mr. Brogan?

A Yes, after I had finished my meetings with both the gentlemen I called Mr. Brogan back and advised him that I had spoken to Mr. Hadley and also Mr. Mause and that they had agreed to participate in making the contributions.

Q Now, subsequent to this, did there come a time when you spoke to Mr. Bradley about this?

A Yes, sir, the following morning when Mr. Bradley came back I reviewed with him what had transpired the day before.

Q And what did you tell Mr. Bradley?

A Well, I advised him of the call that I had had from Mr. Brogan concerning the merit increases for Mr. Hadley and Mr. Mause and also the additional money for making the political contributions by each.

MR. KATZBERG: Thank you, sir.

I have nothing further at this time, your Honor.

MR. BANNIGAN: May I inquire, your Honor?

May I remain here, it might be a little more convenient?

THE COURT: Sure.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. BANNIGAN:

Q Mr. Vandermark, my name is Eugene F. Bannigan, I am the Attorney for the bank.

A Yes, sir.

Q I just have very few questions.

You came into this club, this contributions club in the beginning of 1969; is that correct?

A Pardon me?

Q I say in the beginning of 1969 you came into the club?

A No, sir.

Q The contributions --

A No, it was 1967.

Q 1967, I am sorry.

In connection with that, you received salary increases from the bank of $1700 per year; is that correct?

A Yes, sir.

Q And of that $1700, $1200 was to go for contributions and the balance, $500, was to be used to pay the increases, if there was an increase, in your income taxes; is that right?

A Yes, sir.

Q Now, sir --

MR. BANNIGAN: Mr. Katzberg, do you have Mr. Vandermark's checks?

MR. KATZBERG: Mr. Ryan has them.

(Mr. Ryan handed documents to Mr. Bannigan.)

MR. BANNIGAN: Thank you.

BY MR. BANNIGAN:

Q Do you recall, sir, off the top of your head how much you contributed in each of the years 1969 through 1974?

A No, sir.

Q I show you a document and ask you whether this refreshes your recollection as to how much you gave in each of those years.

A What document is this?

Oh! Yes, sir.

Q It does?

A Yes, sir.

Q How much did you give in 1969?

A $1,050.

Q And how much did you give in the next year?

A 1970, $1,200.

Q How much did you give the next year?

A 1971, $1,000.

Q And how much did you give the next year?

A 1972, $1,105.

Q How much did you give in 1973?

A 850.

Q And how much did you give in 1974?

A $200.

Q So that in a number of years there, sir, you did not give the full $1200; is that correct?

A That is correct.

Q What did you do with the balance that you didn't give?

A I had it in the bank.

Q You kept it; right?

A Sure.

Q It was yours, nobody asked you for it?

A Nobody asked for it.

Q And you kept it?

A Yes, sir.

Q Thank you.

THE COURT: Any other questions?

MR. BANNIGAN: I have some more questions.

THE COURT: I am sorry.

MR. BANNIGAN: I am slow, it will take me a moment.

Q Mr. Vandermark, I notice from your checks that

many, the majority of your checks after the Betty Jaeger account was closed -- I am speaking in terms of the Chadwick, let us call them, the Chadwick requests -- many of those checks are to organizations, political organizations in Nassau and Suffolk County; would that be a fair statement?

A Yes, sir.

Q All right, sir.

Do you know any reason why most of your checks are to those two counties?

A Yes, I live in Nassau and I work in Suffolk and when Mr. Chadwick used to call, most of the requests were from those two counties;periodically,requests came from outside of the counties and I think I would ask to pass and rather give my money, give the money where I was active.

Q You preferred to give your money to Nassau and Suffolk Counties?

A Yes, sir.

Q And if the request came out of the county, you weren't particularly interested in that organization and you asked to be passed over on that occasion?

A Yes, sir.

Q And did Mr. Chadwick pass you over on that occasion?

A Sometimes, yes.

MR. BANNIGAN: Thank you, sir.

I have no further questions.

THE COURT: Anyone else?

MR. NAFTALIS: A couple.

MR. BANNIGAN: Does anybody want them (indicating exhibit)?

(Mr. Katzberg indicated he wanted the exhibit.)

(Mr. Katzberg then handed them to Mr. Ryan.)

BY MR. NAFTALIS:

Q Good morning, Mr. Vandermark.

A Good morning.

Q Did you ever have any conversations about the subject of political contributions or this political contributions club with Mr. Patrick Clifford?

A Only at the time I received a call from the FBI.

Q What did he say to you?

A When I apprised him that I had been called by the FBI to come down and be interviewed by them concerning politic[illegible] contributions, he suggested I call Mr. Shea.

Q Who was the bank counselor?

A That is correct.

Q Other than that, one conversation during the years in question that we are concerned with here and during the years the contributions were made, which is '67 through '74,

did you ever discuss the matter of contributions with Mr. Clifford?

A I don't recall any direct conversations.

Q Did Mr. Clifford ever offer you a raise to make contributions?

A No, sir.

Q Did Mr. Clifford ever ask you to contribute to anybody?

A No, sir.

Q Now, you were a lending officer, primarily?

A Yes, sir.

Q And Mr. Clifford, well, that was in an area which Mr. Clifford had a lot of interest in, in lending?

A Very much.

Q And as a result, you had opportunity to work closely with Mr. Clifford on numerous loans and other business activities of the bank?

A Primarily loans.

Q And during the course of your working together with Mr. Clifford, you had an opportunity to observe the way he conducted his business, his practices regarding loans and business on behalf of the bank?

A Yes, sir.

Q And based upon your personal observations of

Mr. Clifford, isn't it fair and honest to say that he was extremely concerned that all loans, all activities of which you were aware were conducted in accordance with the requirements of the law?

A Yes, sir.

Q And he was always concerned that people who worked for him in the lending area made sure that all the loans were in conformance with all the legal requirements?

A Yes, sir.

MR. NAFTALIS: I have nothing further.

THE COURT: Anyone else?

MR. COHEN: Yes, your Honor.

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Vandermark, you came to the bank in 1958; did you not, sir?

A Yes, sir.

Q And to all intents and purposes you have stayed with the bank throughout all that period of time until today, going through various situations, including the Chemical Bank; is that correct, sir?

A That is correct.

Q During this time did you become familiar with who the various officers and Directors of the corporation were?

A Yes, sir.

Q Now, do you recall in 1966 when David Dowd first came to the bank, do you recall who the President of the bank was?

A When Mr. Dowd came?

Q Yes.

A Mr. Clifford.

Q And do you recall who the Chairman of the Board was in 1966?

A Mr. Maas.

Q Now, I'm going to show you a paper, sir, and I'm going to ask you whether or not it refreshes your recollection.

Now, let me ask you, sir, who was the top officer of the bank in 1966, and see if this refreshes your recollection, the document refreshes your recollection? Will you look at the back,please.

A O.K.

"General Officers: Mr. Maas, Chairman of the Board."

Q And under Mr. Maas, who is the next officer listed?

A Patrick J. Clifford, President.

Q And under Mr. Clifford, who was the next officer listed?

A Frank P. Powell, Executive Vice President and Comptroller.

Q And then there are various Senior Vice Presidents listed, too?

A Yes.

(Continued on next page.)

D 4am

Q Will you read their names?

A David J. Dowd, Abram V. Honan, John W. McCabe, Samuel Spitzbart.

Q All right. Now, in 1967 was there any change of the grouping of officers as you have just read it?

MR. PATTISON: May we have these marked?

MR. COHN: I will mark them.

MR. PATTISON: So the record indicates what he's talking about.

MR. COHN: Do you want to mark each one at a time.

THE COURT: You should mark it first before you hand it to the witness.

MR. COHN: All right. May I have this report of the shareholders of the Security National Bank for 1966 marked.

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit D.

MR. COHN: May I have this marked, Report to Shareholders, June 30, 1967.

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit E.

Q Now, sir, will you look at the 1967 report, and again will you tell us the same order, who the officers of

the bank were, the general officers.

A Herman H. Maass, Chairman of the Board, Patrick J. Clifford, President, Frank B. Powell, Executive Vice President and Controller.

Q How many senior vice presidents do you find there?

A Five.

Q Will you read their names off, please?

A Robert J. Bradley, David J. Dowd, Abram V. Honan, John W. McCabe, Samuel Spitzbart.

Q Thank you.

MR. COHN: May I have the report for 1968 marked?

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit F.

Q Now, sir, will you do the same thing for me with regard to 1968? Will you now call off the general officers in the order in which they appear on that annual report to the shareholders.

A Patrick J. Clifford, Chairman of the Board and President; Frank B. Powell, Executive Vice President and Controller.

Q Now, how many senior vice presidents do you find?

A Six.

Q Will you read their names, please.

A James B. Agnew, Robert J. Bradley, David J. Dowd, Vincent F. Garvey, John W. McCabe, Samuel Spitzbart.

Q Thank you, sir.

I am going to show you one of the -- let me take you back to 1966. Are the names of the directors of the bank listed?

A Yes sir.

Q Do you find the name of William Shea listed as a director in 1966?

A No sir.

Q I show you the Annual Report of 1967. June 30, 1967. Is Mr. Shea listed as a director of the bank?

A Yes sir.

Q Do you know who Mr. Shea is?

A Yes sir.

Q Is he the lawyer that Mr. Clifford told you to go to see when the FBI started to investigate this matter?

A Yes sir.

Q Was this the Mr. Shea who is the general counsel of the bank?

A Yes sir.

Q Did he become the general counsel of the bank, to your knowledge, in 1967?

A I would assume sometime during that period.

Q And did he become counsel to the bank prior to the time that you had the conversation with Mr. Dowd that you told us about this morning?

A I don't know the date of his appointment.

Q But it was sometime in that year?

A It would have to be.

Q All right. Now, I show you the --

MR. COHN: I am sorry. May I have this marked for identification.

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit G.

Q I show you the 1970 report. Will you now, sir, read off who the general officers are, and in the order of their listing on the stockholders report for 1970.

A General officers: Patrick J. Clifford, Chairman of the Board and Chief Executive Officer; A. Holly Patterson, Vice Chairman of the Board; Martin J. Travers, President; Frank B. Powell, Executive Vice President and Cashier.

Q Now, how many senior officers do you find?

A Seven.

Q Will you read their names off, sir?

A James B. Agnew, Robert J. Bradley, David J.

Dowd, Vincent F. Garvey, John W. McCabe, Samuel Spitzbart, and Robert E. Vandermark.

Q Is Mr. Shea still listed as a director?

A Yes sir.

MR. COHN: May I have this marked, your Honor.

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit H.

Q I show you the 1971 report, sir. Will you tell me what the officers are and the order in which they are listed.

A This is a report of March 9, 1971.

Patrick J. Clifford, Chairman of the Board and Chief Executive Officer; A. Holly Patterson, Vice Chairman of the Board; Frank B. Powell, Vice Chairman of the Board and Cashier; and Martin J. Travers, President.

Now there are ten senior vice presidents.

Q Will you read their names?

A James B. Agnew, Stephen D. Corriss, David J. Dowd, James K. Lamberton, William W. Lowe, John W. McCabe, John P. Singleton, Samuel Spitzbart, Robert E. Vandermark, Douglas F. Wulffleff.

Q Is Mr. Shea still a director?

A Yes sir.

MR. COHN: May I have this marked, your Honor?

THE CLERK: One pamphlet marked for identification as Defendant's Exhibit I.

Q Would you please look at this document, sir, referring to the Annual Report for 1972, and at the page that I have indicated to you, will you now call off the officers of the Security National Bank in 1972, and the order in which they are listed.

A General officers: Patrick J. Clifford, Chairman of the Board, and Chief Executive Officer; Rex D. Johnson, President and Chief Administrative Officer; William Goldfine, Vice Chairman of the Board; A Holly Patterson, Vice Chairman of the Board; william W. Lowe, Executive Vice President; Joseph Stefan, Executive Vice President; James B. Agnew, Senior Vice President --

Q Will you just tell us, before you read the names, how many senior vice presidents do you have now in 1972?

A Nine.

Q Will you read their names, sir?

A James B. Agnew, Albert Fach, Robert M. Burke, Stephan D. Corriss, James K. Lamberton, John W. McCabe, who is also the Cashier; John P. Singleton, Robert E. Vandermark, Hans Wydler.

Q Is Mr. David Dowd's name listed in the 1972

Annual Report to the Shareholders as being a senior vice president of the bank?

A No sir.

Q Does he appear anywhere there as an officer of the bank?

A No, not that I can see.

Q Does Mr. Powell's name appear in the 1972 report as an officer of the bank?

A No sir. He's listed as a consultant and adviser.

MR. KATZBERG: May I have the date of that report, please.

THE WITNESS: 1972 Annual Report of the bank.

MR. COHN: Your Honor, these are all here.

Q I want to take you back, sir, to the time that you and David Dowd had this conversation that you have told us about in 1967. And as I recall your testimony, sir, you told us it was in about November of 1967; is that correct?

A Yes sir.

Q And do you recall where this conversation took place?

A It took place in my office.

Q David Dowd came to see you?

A Yes sir.

Q Was there anybody else present?

A No sir.

Q Now, when Dave Dowd had this conversation with you, he asked you whether you would join; isn't that right?

A Yes sir.

Q And then you agreed that you would join; is that correct?

A Yes sir.

Q Didn't Dave Dowd tell you this was voluntary?

A Yes sir, he did.

Q Now, you had a conversation with Dave Dowd with regard to the legality; isn't that correct?

A Yes sir.

Q And didn't Dave Dowd tell you that a bank could not make direct contributions, but the bank officers could if they did it voluntarily?

A Yes sir.

Q And he told you that he wanted you to voluntarily join this plan; isn't that correct?

A Yes sir.

Q Now, from time to time you received salary increases over the years that you were there; is that correct?

A Yes sir.

Q And each time that you were given a salary

increase over all of the years you were there, were you not told to keep that confidential?

A Yes sir.

Q And as far as you know, that was also told to every officer of the bank? As far as you know; is that correct?

A Standard procedure.

Q Standard procedure.

So whatever -- whenever you or any other officer of the bank were given a salary increase, you were always told to keep it confidential?

A Yes sir.

Q And you did, sir?

A Yes sir.

Q And Dave Dowd told you at the time that he had this conversation with you that prior to that conversation the directors were the ones who were contributing money for this political fund; isn't that correct?

A Yes sir.

Q Now, Mr. Katzberg asked you something about cash. Do you remember that?

A Yes sir.

Q Did Dave Dowd ever tell you to make any contributions to this fund in cash?

A No sir.

Q As a matter of fact, you were questioned about this cash business before the grand jury by Mr. Katzberg, weren't you?

A I believe I was.

Q Back in -- on May 28, 1975?

A I believe so.

Q And didn't you tell the grand jury and didn't you tell Mr. Katzberg that the cash was purely for your own convenience?

A Yes sir, I did.

MR. KATZBERG: Will you indicate the page?

(continued next page)

MR. COHN: This is on Page 13 and 14.

Q And didn't you also tell Mr. Katzberg back on May 28, 1975, that the payment of the cash was purely coincidental?

A It didn't make any sense to write a check to someone in the same building when I was cashing a check.

Q But -- I agree with you, but that's what you told Mr. Katzberg; is that correct?

A I believe it is.

Q And you did tell him that it was coincidental that you made these payments in cash?

A I believe that's correct.

Q And Mr. Katzberg has known all about the fact that you were making these cash payments conidentally for your own convenience, since May of 1975; is that correct?

MR. PATTISON: Objection.

THE COURT: It doesn't make any different whether he knew it or not.

All right.

Q Is that correct?

A Yes, sir.

Q As a matter of fact, when Mr. -- withdrawn.

When Mr. Doud talked to you about the contribution, he stressed that it was voluntary, isn't that correct, sir?

A Yes, sir.

Q Now, Mr. Vandermark, there came a time that you yourself spoke to two other officers of the bank with regard to their joining the club; is that correct?

A Yes.

Q Did Mr. Dowd tell you to do that?

A No, sir.

Q Youwere told by another officer; is that correct?

A Yes, sir, Mr. Brogan.

Q When you spoke to these two other officers you also told them it was voluntary, did you not?

A Yes, sir.

Q And you -- withdrawn.

Did you ever tell these other two officers to pay by cash?

A No, sir.

Q Now, let me ask you this, sir, when you spoke to Mr. Hadley and Mr. Maass about their salary increase, you spoke to them each alone?

A Yes, sir.

Q Did you speak to them in an office or did you speak to them in a men's room?

A In my office.

Q Was there anything that you were hiding from them or anything that you were trying to hide from the world?

A No, sir.

Q Was your office located generally in the bank?

A Yes, sir.

Q People coming back and forth in and out of the bank and hall where your office was located?

A Yes.

Q Anything secret or covert or surreptitious about your conversations with these two officers?

A No, sir.

Q Was there anything secret about the conversation that Dave Dowd had with you?

A No, sir.

Q You didn't lock the door or go into a closet and talk about it, did you?

A No, sir

Q At the time you spoke to Mr. Maass and to M. Hadley, did you believe at that time that you were

conspiring with them or anyone else to violate Section 610 ofthe U. S. Code, referring to political contributions to elections?

A No, sir.

Q Did you believe at that time when you asked them to join the club, you were committing a crime?

A No, sir.

Q Did you believe at the time you asked those two gentlemen that you were doing what Mr. Dowd told you to do, you were conspiring to violate -- withdrawn.

At the time you met with these two bank officers and you asked them to do exactly what Mr. Dowd asked you to do, did you believe at that time you were then violating Section 656 of Title 18 of the U. S. Code entitled: Theft Embezzlement, or Misapplication by a Bank Officer or an Employee?

A Absolutely not.

Q Did you believe you were committing any crime?

A No, sir.

Q Did you believe you were embezzling any bank monies or misapplying any bank monies?

A No, sir.

MR. COHN: I have no further questions.

CROSS-EXAMINATION

BY MR. RYAN:

Q These series of checks designated '68-A through G, which you drew pursuant to the request of Mr. Chadwick during the years 1973 and '74, would you look at them briefly?

A Yes.

Q Did Mr. Powell have anything to do with the selection or writing of those checks?

A No, sir.

CROSS-EXAMINATION

BY MR. COHN (Cont'd):

Q Did Dave Dowd ever tell you who to vote for or support any particular party?

A No, sir.

Q Did the bank or you or any other officers of the bank to your knowledge ever go out and tell anybody to go out and vote for certain people?

A No, sir, not to my knowledge.

Q Do you know Dave Dowd to be a politician or run for any office?

A No.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q When you indicated sometimes when Mr. Chadwick would call you up with these requests for contributions, that you would prefer to make your contributions in Nassau and Suffolk; is that right?

A Yes.

Q Did you ever choose yourself any of the political organizations that youwrote checks to?

A No, sir.

MR. KATZBERG: Thank you.

THE COURT: All right --

MR. KATZBERG: I have a few more questions.

Q Now, when Mr. Dowd told you about the previous system of contributions whereby the directors were making the contributions, didhe tell you whether or not the directors were paid for the contributions or --

MR. BANNIGAN: Objection, improper redirect. The matter was covered --

THE COURT: I will allow it.

THE WITNESS: Repeat the question.

Q I will rephrase it.

Isn't it a fact when Mr. Dowd first told you about the previous method under the directors that

he told you the directors were making their contributions out of their own pockets?

A Yes.

Q That was inadequate for the bank to make these contributions at that particular time?

A Yes, sir.

Q And that's why the system was being changed?

A Yes.

Q Mr. Cohn has been referring to a number of these reports. I believe they are marked D, E, F, G, H and I.

Now, referring to 1967, where it lists Herman Maass at the top, what was Mr. Maass' role in the bank in 1967?

MR. COHN: The documents tates he was chairman of the board and that speaks for itself --

THE COURT: That's not in evidence.

MR. COHN: Then I will offer it in evidence.

MR. KATZBERG: When it is your turn.

THE COURT: He has a right to ask what it is. He is not limited to what a document says.

Q What was Mr. Maass' role in 1967, sir?

A Outside of being chairman of the board.

Q Did he play an active role in the bank?

A Limitedly.

Q Who was in charge of the bank in 1967?

MR. NAFTALIS: Objection, your Honor.

THE COURT: Yes.

MR. KATZBERG: I want to make it clear --

THE COURT: Just ask your question.

The witness must make the answers clear.

What you want to make clear is not material.

Q Isn't it a fact that Mr. Maass in 1967 and in 1968 played very little role in the function of the bank?

THE COURT: That's a suggestive question.

Don't answer it.

Q Now, Mr. Cohn, sir, also had you read off a list of senior vice-presidents and Mr. Dowd was included.

fls.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. KATZBERG: (Cont'd.)

Q During the years '68 and '69 and '70, were there any of the senior vice presidents who were in a more powerful position than the others in the structure of the bank?

MR. COHN: Objection.

THE COURT: Sustained as to form. Power is a relative word and a question shouldn't have relative words. I suppose is powerful who gives away money.

Q During these years were you familiar with the hierarchy of the bank in terms of decision making?

MR. COHN: Objection.

THE COURT: Overruled. Policy making.

MR. KATZBERG: Yes.

A Yes.

Q Did any of the senior vice presidents have greater authority in that regard than the others?

MR. COHN: Objection.

THE COURT: Yes. Was the position such that one had greater say in stating a policy than another?

MR. KATZBERG: I will ask that question.

A Yes, sir.

Q And who was that?

A Mr. Dowd.

Q One final point and I will be finished with respect to the question of voluntariness and what Mr. Dowd told you and what you said in the Grand Jury, during the course of your Grand Jury testimony on May 28, '75, were you asked these questions?

MR. COHN: I object. I haven't read from the minutes.

THE COURT: Overruled.

Q Were you asked these questions and did you give these answers, Page 21?

MR. NAFTALIS: Your Honor, he may refer to the Grand Jury to the extent it impeaches his --

THE COURT: He will ask him if he made an answer to the question asked of him.

MR. COHN: May we have a side bar on this?

THE COURT: Maybe we better have a side bar.

(Side bar discussion out of hearing of the jury as follows:)

MR. COHN: Judge, when we first started this trial, we told you that this indictment was unfairly obtained because the indictment was not obtained

on the testimony of witnesses but testimony of Mr. Katzberg because this Grand Jury testimony is replete with leading questions. What happens is this, there is a question in the Grand Jury minutes, from Page 20.

THE COURT: He will not read from there.

MR. COHN: Katzberg asked --

THE COURT: I think we better send the jury out.

MR. PATTISON: Let them go for lunch.

THE COURT: Yes, you may be excused, members of the jury. Read nothing, hear nothing and see nothing. Don't discuss the case. Be back here at 2:15 p.m.

(The jury withdrew from the courtroom at 12:55 p.m. and the following occurred out of hearing of the jury.)

MR. COHN: Now the jury has departed, let me continue, we pointed out the basic unfairness of the manner in which this indictment was obtained because of the improper questioning by Mr. Katzberg. On the bottom of Page 20 of Mr. Vandermark's Grand Jury testimony, he's asked:

"Question: On the question of voluntary,

Mr. Dowd stressed to you this was a voluntary system. Is that fair to say?

"Answer: Yes."

Now, this is what he wants to read and this is unfair and leading:

"Question: Let me ask you this. Mr. Dowd was your boss, correct?

"Answer: Yes, sir.

"Question: He had discussed this matter with you, which was not an unsubstantial matter, isn't that correct?

"Answer: Yes.

"Question: He indicated this was an important matter for the bank?

"Answer: Yes.

"Question: And senior management was counting on a few key employees?

"Answer: Yes.

"Question: And you were to join an already ongoing organization, so to speak, is that correct, sir?

"Answer: In effect, yes.

"Question: With those factors in mind, how voluntary was it?

"Answer: Halfhearted.

"Question: In other words, you didn't go knocking on Mr. Dowd's door with the sudden urge to make contributions, did you, sir?"

THE COURT: I won't permit that to be asked.

MR. KATZBERG: He is reading everything but what I am going to read. I am going to read Page 21 as follows:

"Question: As you say halfhearted, could you please elaborate on that?

"Answer: Well, in any organization where a boss asks you to do something voluntarily, it is very seldom that you don't."

THE COURT: All right.

MR. COHN: That's a subjective item not binding on the defendants.

MR. KATZBERG: Mr. Cohn --

THE COURT: He may ask that before the jury.

When you refer to the Grand Jury minutes, when you say, "Didn't you tell the Grand Jury", no one knows whether you are reading directly from it. Once you refer to it you permit them to come back with the question of impeachment.

MR. COHN: Will you permit me to read other

THE COURT: Yes.

MR. COHN: I object to it.

MR. BANNIGAN: I would like an objection to be noted that I object to both counsel, both Mr. Cohn and Mr. Katzberg, going into this area on bahalf of the bank and having gone into this area --

MR. NAFTALIS: I join in that objection.

MR. RYAN: These Grand Jury minutes are abominable and I object to going into it.

THE COURT: They were questions and answers and they can use it.

MR. BANNIGAN: On a point --

MR. NAFTALIS: We will raise the question -- when you come back this afternoon.

(Continued on next page.)

AFTERNOON SESSION (2:30 p.m.)

THE COURT: Now, where were we?

MR. RYAN: Redirect examination of the Grand Jury minutes by the Assistant.

THE COURT: Right.

MR. COHN: I think we all want to say something. Now that I am a little more comfortable, I can talk a little slower. And I think your Honor indicated that you were going to permit Mr. Katzberg to read to the jury the portion of Mr. Vandermark's Grand Jury testimony that appears at the bottom of page 21. Because I think your Honor was under the belief that I had opened up the door on the issue of voluntariness by re-reading from the Grand Jury testimony on voluntariness, and in that respect, your Honor, my recollection is that I have not done so. And I think your Honor may -- your Honor may be in error. My recollection is that I merely asked this witness the questions -- and the two questions stated, did Mr. Dowd tell you this was voluntary, and did Mr. Dowd stress to you that it was voluntary. Neither of these questions relate in any way to the Grand Jury minutes, your Honor.

THE COURT: But if he makes the statement at some other time prior or during, he can be reminded of that statement.

A 404

MR. COHN: No.

THE COURT: What do you mean?

MR. RYAN: But not reading the Grand Jury testimony.

MR. PATTISON: It depends. If I may --

MR. COHN: Can I finish my statement. If I may?

THE COURT: Sure.

MR. COHN: I then pointed out to your Honor that on page 21 there was some testimony in the Grand Jury, which I think your Honor agreed with me --

THE COURT: That I would not permit. You're right. No problem on that.

MR. COHN: What they want to do is this. Having elicited one answer as a conclusion of one --

THE COURT: It happens in depositions all the time.

MR. COHN: And they want to read something that relates back to the earlier question in order to understand the --

THE COURT: No, I don't agree with you. It happens in depositions all the time. They pick out one question and one answer out of hundreds and hundreds of pages. There's nothing unusual about it.

MR. COHN: If your Honor please --

THE COURT: I don't know what all the fanfare

is about.

MR. COHN: May I say, he's going to ask this question:

And you say, half-heartedly. Could you please elaborate on that.

Now, the half-heartedly relates to what your Honor said you wouldn't permit him to read.

THE COURT: Do you want me to strike out the half-heartedly?

MR. PATTISON: The half-heartedly is what he said.

MR. KATZBERG: On direct.

MR. COHN: If he said it in court, how can they read from the Grand Jury that it's been inconsistent?

MR. KATZBERG: On cross, Mr. Cohn --

THE COURT: Because the issue was whether or not he said, number one, voluntary, like you said he did; which leaves an impression to the jury that this is a -- the first time that he's mentioned the fact that it was voluntary. So, therefore, they have a right to show that he has said it before, regardless of how he may have modified the question or the answer is immaterial. Just to show he said it before. I don't see anything wrong with it. That's my response. I don't think there is any need for further discussion.

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If your whole case depended on these two questions, these two -- these two questions and answers, we are all in trouble. I can't see it. I don't know what the discussion is about. It's proper.

MR. COHN: O.K. If that's the --

THE COURT: I will stand on my error. It is proper.

MR. COHN: No, I won't debate or discuss this further. But may I say this. If that then comes in, will your Honor object to my reading --

THE COURT: I have no objection to you reading the whole Grand Jury.

MR. BANNIGAN: I object to Mr. Cohn reading anything from the Grand Jury.

MR. KATZBERG: I will not.

THE COURT: If you object to that -- it doesn't apply to you.

MR. RYAN: On this particular witness.

THE COURT: Well, this happens when there are defendants. This happens if one defendant may have something beneficial and the other may have something detrimental.

MR. BANNIGAN: My point is completely --

THE COURT: Why shouldn't he read what you are going to --

MR. BANNIGAN: I would like to be heard, your Honor.

THE COURT: All right.

MR. BANNIGAN: Your Honor, this is just really a question of procedure. If Mr. Cohn asked the witness, did Mr. Dowd tell you that it was voluntary, then I have no objection to the witness testifying to anything else that he may have said Mr. Dowd told him on the question of voluntariness. I think it's perfectly proper.

However, I would object if the witness is going to be asked whether he thought it was voluntary or anything like that, since that is subjective. I would not object, however, to questions, were you --

THE COURT: What do you mean? Whether he thought it was voluntary?

MR. BANNIGAN: In his mind.

THE COURT: The operation of his mind?

MR. BANNIGAN: Which is irrelevant here.

MR. RYAN: It is not going to be permitted.

THE COURT: I don't know the question. You are all paraphrasing it.

MR. KATZBERG: Maybe we can agree on it.

THE COURT: This happens on sworn depositions. And you're asking the Court to make rulings on statements

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that I don't know -- that I don't know exist. I haven't even seen them. If you have any question, show it to me and I will make the ruling.

MR. PATTISON: Maybe I can make an offer of proof now and tell the Court the actual question that we intend to --

THE COURT: All right, read the actual question.

MR. BANNIGAN: That would help.

MR. PATTISON: The question would be put to the witness as such.

THE COURT: What are you going to ask?

MR. PATTISON: We are going to ask, Mr. Cohn asked you questions concerning what Mr. Dowd said relative to voluntariness. Is that right?

Yes.

MR. BANNIGAN: I object to the form of the question. Not relevant. He asked him whether he said whether it was voluntary.

MR. RYAN: Let him finish the offer of proof.

MR. BANNIGAN: I am sorry.

MR. PATTISON: Then, was it --

THE COURT: Voluntary?

MR. PATTISON: Yes.

MR. BANNIGAN: I object to that.

MR. RYAN: I object.

MR. PATTISON: I think the door has been opened.

MR. COHN: I only asked as to what he was told.

Did Mr. Dowd say to you it would be voluntary?

THE COURT: No. Your questions went to the following vein: Did you give -- Did you agree to the plan?

Yes.

And did you pay it in cash at times?

Answer: Yes.

Did you take it out of the bank?

Yes.

Was it voluntary?

Yes.

MR. BANNIGAN: No.

THE COURT: Did anybody make you --

MR.BANNIGAN: He never asked him that question.

THE COURT: Go back to the record.

MR. BANNIGAN: He never asked him the question.

THE COURT: All right. Get Michael Miele down here.

MR. PATTISON: He may not have asked it in those words.

THE COURT: That's what he asked.

MR. KATZBERG: That was the thrust of it.

THE COURT: The thrust of the examination was

voluntariness. And I don't care whether you put voluntary first, last or in the middle. But that's the words which were used, voluntary. And I think he used it in four different questions in identifying the voluntariness of the contribution that was made.

MR. BANNIGAN: I will ask that the reporter get the question.

THE COURT: I don't forget too much. Not that I take notes, but I --

MR. RYAN: Your right about the subject matter. But he said, did Mr. Dowd stress that it was voluntary. That's what Mr. Dowd told the witness.

THE COURT: No. When he spoke to the other persons who were involved, did he tell them it was voluntary. Was there any discussion that it was not voluntary. I remember those questions.

MR. PATTISON: Right.

THE COURT: That was Mr. Brogan and whoever --

MR. KATZBERG: Mause and Hadley.

MR. COHN: We agreed to that. But I don't believe --

THE COURT: I know. But the question of voluntariness --

MR. KATZBERG: The door has been opened.

THE COURT: It has been in here completely

throughout the questioning on your part. And therefore I see no reason why this altercation -- verbal altercation should take place before the Court at this time.

MR. BANNIGAN: Because they are going to the operation of the witness' mind.

THE COURT: No. I will let you in on something.

MR. BANNIGAN: If he asked, was it voluntary, -- goes to the operation of his mind.

MR. PATTISON: I think that is a proper area.

MR. BANNIGAN: I object.

THE COURT: You know, the problem with the objection -- the objection of the operation of the mind -- there isn't a person in the world who's been born or who has intelligence of the mind who doesn't think first before he answers. So the objection of the operation of the mind is totally something that lawyers make a great big deal out of. Everybody has to think about an answer. Of course, it's on his mind. It doesn't go to his feet. He's not talking with his feet. He's voicing an opinion.

When a question is asked, he voices an opinion. There's no question about it.

MR. BANNIGAN: My objection on behalf of the bank --

THE COURT: No, I don't want any --

MR. BANNIGAN: Anything that --

THE COURT: I don't want to argue.

MR. BANNIGAN: Anything that was said --

THE COURT: I don't know what the fight is about.

MR. KATZBERG: May I call the witness, your Honor?

THE COURT: O.K. You take an exception.

MR. BANNIGAN: I move for a severance.

THE COURT: No severance.

All right, what do you want?

MR. NAFTALIS: I join in Mr. Bannigan's application and also move for a severance. These were not areas that we went into.

THE COURT: Both applications are denied.

MR. BANNIGAN: We scrupulously stayed away from it.

THE COURT: Whatever may have been scrupulously done still does not void the fact that it may be admitted into evidence.

MR. NAFTALIS: I think -- Your Honor, I'm not going to argue. But let me make one comment.

THE COURT: Just take your exception and let's get on with the case.

MR. NAFTALIS: Let me make one statement for the

record in terms of the severance because I -- I won't argue any further. This was not a door that Mr. Clifford opened, nor was it a door that the bank opened. And, therefore, we object to it being opened to our detriment.

THE COURT: I might as well place on the record when defendants are being tried together, in every case that I have tried for 20 years, defendants are joined in practically everything that is said, and it is prejudicial to someone. So, therefore, I still deny your motion.

MR. NAFTALIS: Thank you, your Honor.

MR. BANNIGAN: Thank you.

THE COURT: The whole indictment is prejudicial. That's why they are here, you know. Let's use common sense.

O.K., bring in the jury.

R O B E R T V A N D E R M A R K , having been previously duly sworn, testified further as follows:

(Whereupon, the jury entered the courtroom.)

THE COURT: All right, we are ready to proceed now.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Vandermark, you recall that Mr. Cohn asked

you on cross-examination if Mr. Dowd told you that your participation in these contributions was strictly voluntary? Do you remember that question, sir?

A Yes, sir.

Q Do you remember what answer you gave?

A Yes, sir.

Q What was that?

A Yes.

Q That's what he said; is that correct?

A Yes.

Q Was it voluntary, sir, on your part?

A Voluntary after a fashion. How do you say no when a superior comes and tells you, you're one of the group that will be selected to do something?

It is not a case -- he didn't coerce me. He didn't threaten me.

(Continued on next page.)

jb/ss

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BY MR. KATZBERG:

Q Did he have to?

A Pardon?

Q Did --

MR. BANNIGAN: I object to that.

THE COURT: I didn't hear it.

MR. BANNIGAN: "Did he have to?"

MR. RYAN: Did he have to coerce him.

MR. NAFTALIS: I object and I move to strike the question.

THE COURT: I will strike the question.

MR. KATZBERG: I will withdraw it.

THE COURT: All right, disregard it.

Q Continue.

A That's all.

THE COURT: All right, that's the answer to the question.

MR. KATZBERG: I have nothing further.

MR. BANNIGAN: No questions.

THE COURT: All right, you may step down.

MR. RYAN: Thank you, sir.

(Witness excused.)

MR. KATZBERG: May the witness be excused.

THE COURT: It's your witness.

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MR. PATTISON: Excused from the Courthouse.

THE COURT: From the Courtroom, yes.

MR. KATZBERG: The Government calls James Lamberton.

J A M E S K. L A M B E R T O N , called as a witness, being duly sworn by the clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Lamberton, by whom are you currently employed?

A National State Bank of Elizabeth, New Jersey.

Q For how long have you been employed by that bank?

A Since July 7th, 1975.

Q And prior to that time, by whom were you employed?

A Chemical Bank of New York.

Q How long were you employed by the Chemical?

A From the time of the merger with Security National Bank in January of 1975.

Q Now, prior to the time of that merger, were you an employee of the Security National Bank?

A Yes.

Q When did you first start working for the

Security National Bank?

A In February of 1967.

Q What was your title at that time?

A Vice president.

Q Did you continue to work at the Security National Bank continuously through -- from 1967 through 1975?

A Yes.

Q Now, what were your duties as vice president at the Security National Bank?

A In the operations area.

Q Will you tell the jury what that entails just briefly, sir?

A Computer area, bookkeeping, branch location; anything with the running of the bank.

Q Thank you.

A Operating the bank.

Q I am sorry?

A To the operations of the bank.

Q Thank you, sir.

Now, referring now to the year 1967, where was your office located physically?

A Huntington.

Q Was that a branch or the main office?

A That was the main office.

Q Who was your immediate superior at the time?

A Frank Powell.

Q What was his title?

A Frank was executive vice president.

Q Was he likewise located in Huntington?

A Yes.

Q Who did he report to?

MR. NAFTALIS: We have been through this a hundred times.

THE COURT: What's that?

MR. NAFTALIS: Who does he report to. So does the messenger. They all work their way up ultimately.

THE COURT: All right.

MR. PATTISON: The messenger is not on trial here.

MR. NAFTALIS: We will stipulate as to what department the bank --

THE COURT: I think the question now is sort of self-answered each time.

Q Now, Mr. Lamberton, I want to direct your attention to approximately November of 1967. Did there come a time when you had a conversation with someone concerning political contributions?

A Yes.

Q Who was that conversation with?

A Frank Powell.

Q Was that conversation in person or over the phone?

A Personal.

Q Where did it take place?

A Huntington.

Q Do you recall wh e specifically in the Huntington main office?

A In Mr. Powell's office.

Q Was anybody else present other than yourself and Mr. Powell?

A No.

Q Now, would you tell the ladies and gentlemen of the jury, to the best of your recollection, what Mr. Powell said at that time?

A He asked if I would join the other senior officers of the bank in making contributions to political organizations, and that basically the cost would be offset through a increase of my salary.

Q Did he mention how much of a salary increase you would receive?

A Yes. $1,700 a year.

Q Now, did he indicate how much you would be

A 420

6 Lamberton-direct

expected to contribute?

A Yes. 1200 a year.

Q Now, what if anything did you say to that, sir?

A I asked if it was legal.

Q What did he say?

A He informed me that he had -- it had been cleared through counsel and the controller of currency office.

Q That both had cleared it; is that correct?

A Yes.

Q When you say the office of the controller of the currency, would you tell the ladies and gentlemen of the jury what the office of the controller of the currency is.

A The controller -- the controller supervises national banks. And the office in New York supervises the banks in the second Federal Reserve district.

Q Now, when Mr. Powell told you this, did he tell you what attorneys if any specifically approved this?

A No.

Q Now, how were you to make these contributions, sir?

A $50 a payday. Twenty-four times a year to Betty Jaeger. Make them payable to Betty Jaeger.

Q How many paydays did you have a month generally?

A Two. Twenty-four a year.

Q Now, was anything said about the manner in which contributions had been made prior to -- prior to this time?

A Yes.

Q What was said?

A That bank directors had made them out of their directors fees and that they were more or less reluctant to continue contributing their own funds towards these contributions.

Q Did he say anything more in that regard?

A Not basically anything more than that.

Q Now, did you agree to contribute, sir?

A Yes.

Q Did there come a time, Mr. Lamberton, when you actually received the $1,700 contribution increase that you had been promised by Mr. Powell?

A Yes.

Q Approximately when was that, sir?

A Late 1967.

Q Mr. Lamberton, I want to show you what has previously been marked as Exhibit 29 for identification. And I want you to look at it, sir, and tell us whether or not you see on there the $1,700 contributions increase that you received?

A Yes.

Q Could you give us the date of that, please?

A November 27, 1967.

Q And the amount?

A $1,700.

Q Now, there are other entries on that card; isn't that correct, sir?

A Yes.

Q And are all of those entries a fair and accurate representation of all your salaries, titles and salary increases for the period of time you worked at the Security National Bank?

A Yes.

MR. KATZBERG: At this time, your Honor, the Government would offer into evidence Exhibit No. 29 for identification.

MR. BANNIGAN: No objection.

MR. NAFTALIS: No objection.

THE COURT: Mark it.

THE CLERK: Government Exhibit 29 received in evidence.

(So marked.)

Q I notice that on Exhibit 29 -- withdrawn.

You said that the $1,700 increase was 11/27/67; is that correct?

A Yes.

Q What is the very next entry?

A January 8th, 1968.

Q Less than two months later; is that correct?

A Yes.

Q And how much of a raise did you get then?

A $5,000.

Q What was the purpose of that raise?

A That was merit.

Q Regular merit raise; is that correct?

A Yes.

Q Thank you, sir.

Now, Mr. Lamberton, after receiving this contribution increase, did there come a time when you began to make the contributions?

A Yes.

Q Approximately when did you start to make these contributions?

A I would say December of '67.

Q And how would you do it? Physically, what would you do?

A I'd make a check payable to Betty Jaeger for $50 and give it to her.

Q For how long a period of time did you continue

to draw your check payable to Mrs. Jaeger and deliver them to her?

A Gee, I'm not exactly certain of the exact time, how long it went on. But it -- couple of years, I guess.

Q Now, during the period of time that you were giving your checks to Mrs. Jaeger, were you ever told which specific individual got the money eventually?

A No.

Q Now, did there come a time when you no longer wrote your checks payable to Mrs. Jaeger?

A Yes.

Q Approximately when did you stop making them payable to Mrs. Jaeger?

A I can't remember the exact date. But we then made them payable to political entities. I don't remember.

Q Would it refresh your recollection if I said around August or September of 1970? Does that sound about right to you, sir?

A That would be about right, yes.

Q Now, how did you learn about that change, sir?

A I can't recollect exactly who told us to change it, stop paying Betty Jaeger. But I imagine it would be Mr. Powell who told me.

Q Did he tell you why the change was taking place?

A The idea was --

MR. RYAN: As best you can recall. I would like to have the conversation between Mr. Powell, if that is what the witness recalls, and himself.

THE WITNESS: It's a little difficult to remember exactly the exact conversation.

MR. RYAN: The substance of what was said.

THE COURT: The substance of what was said. What was said to you and what you said to him.

THE WITNESS: The point was that -- wanted a greater identification of the contribution. Before then Betty Jaeger would make the checks payable to the political entities.

Q That is what Mr. Powell told you?

A Basically. The general trend of the conversation.

Q Now, how would you know who to make your checks payable to, sir?

A We would be told who to draw the checks payable to.

Q Who told you that?

A A number of various people. Could have been Joe Dutra, Tom Casey, Arthur Chadwick.

Q You would write your checks pursuant to those

instructions; is that correct?

A That's correct.

Q Now, who, if you know, was actually making the decisions as to which politicians or political groups were receiving these moneys?

MR. NAFTALIS: Objection.

MR. COHN: I object.

MR. NAFTALIS: He can testify to any conversation he had.

MR. KATZBERG: If he knows.

THE COURT: I will sustain it. Rephrase it.

Q Did you ever hear any conversation among either Mr. Clifford, Mr. Dowd or Mr. Powell?

MR. BANNIGAN: Objection.

MR. NAFTALIS: Objection.

Q Where it was discussed.

MR. BANNIGAN: I object to the form of that, "Did you ever hear --"

THE COURT: No, I will allow it.

Q Wherein was discussed which politician or political committees would be receiving these moneys?

A Basically --

MR. KATZBERG: Can the witness be allowed --

MR. COHN: May I have the witness merely state

yes or no, whether he ever heard such a conversation.

THE COURT: Yes. At this point.

THE WITNESS: Yes.

Q Now, will you tell the ladies and gentlemen about that.

MR. BANNIGAN: Objection.

MR. COHN: May we have the conversation and who he had the conversation with.

MR. KATZBERG: About that conversation?

MR. RYAN: Where it took place.

THE COURT: Time and place.

Q Is this a conversation that you yourself took part in or overheard?

A It would be a conversation I had overheard.

Q Where did this conversation take place?

A I shared an office with Mr. Powell in Huntington. And at times Mr. Dowd, Mr. Clifford, Mr. Powell would discuss what they were having. I couldn't help but overhear. We were about eight feet apart.

Q What was the nature of those conversations?

MR. RYAN: I am sorry. I will have to object. Can the witness recall an occasion when certain people were present, the substance of what was said and who said it. That I won't object to. But not the

general nature --

THE COURT: All right.

Q During the course of any of these conversations, can you recall any of them specifically?

A No, I cannot.

Q Without being able to refer to a specific conversation, could you tell us the essence of the conversation in general?

MR. NAFTALIS: Objection.

MR. RYAN: Objection. He can testify about conversations, but no opinions.

MR. KATZBERG: It is not a question of opinion.

THE COURT: Well, essence would be an opinion.

The substance. Substantially, what were the conversations about.

Q Substantially, what was the conversation about?

THE COURT: To the best of his recollection.

MR. COHN: I believe the witness testified he can't recall the conversation.

THE COURT: Well, let's find out if he can recall.

MR. PATTISON: He can't recall any one specific conversation.

THE COURT: You need not recall the exact words.

You can give us what you believe substantially what you said at that time, if you can recall. If you can't recall, then say you can't recall.

THE WITNESS: The only thing I can recall is conversations where they discuss who would receive contributions.

Q When you say, "they," whom are you referring to?

A Political candidates or parties.

Q And which individuals held these conversations that you overheard?

A I would say the principal officers of the bank, which would be Mr. Clifford, Mr. Dowd and Mr. Powell.

Q Thank you, sir.

Now, I want to show you what has been previously identified -- marked for identification as Exhibit 74. I want you to look at the contents of Exhibit 74 and tell us whether or not you recognize them?

A I recognize them.

Q What do you recognize them to be?

A My checks.

Q Are those the checks that you wrote pursuant to the contribution?

A Yes.

Q Now, what is the first date of the first check

on that exhibit?

A This is February 1st, 1971.

Q Now, you testified, Mr. Lamberton, that you began to contribute prior to that, sometime in early '68; is that correct?

A Yes.

Q And did you contribute by check at that time?

A Yes.

Q And you said you wrote the checks payable to Betty Jaeger?

A Yes.

Q Where are the checks for '68, '69 and '70, sir?

A I destroyed all of the checks on a yearly basis, except the ones that support my income tax. And I did that periodically. I just never got to these.

Q You just destroyed them in the normal course of getting rid of old records? Is that it, sir?

A Yes. That's it exactly.

Q Now, referring to the checks that -- which we identified in that exhibit, the one that begins in February of '71, is it fair to say that those checks are drawn to political candidates, parties, et cetera?

A Yes.

Q And were each and every one of those checks

drawn by you as per either Mr. Casey or Mr. Chadwick's direction or instructions?

A Yes.

Q Now, did you at any time ever not go along with the instructions you received as to who to make your checks payable to?

A No.

Q You always went along?

A Pretty much so.

Q Now, if you look in there, I notice that there is a --

MR. KATZBERG: Well, let me offer it into evidence first. At this time the Government would offer Exhibit 74, 74-A through F into evidence.

MR. BANNIGAN: No objection from the bank. I would like to see them first, though, if I might.

MR. NAFTALIS: Mr. Katzberg, as far as Mr. Clifford is concerned, he has no objection except for one of the checks that is a void check. I don't know if it's in there by mistake. Apparently this was never negotiated.

MR. KATZBERG: I have no objection to withdrawing that from the exhibit.

THE COURT: Okay.

MR. NAFTALIS: Thank you, Mr. Katzberg.

MR. KATZBERG: May the checks be received in evidence, your Honor? May the checks be received?

THE COURT: Yes.

THE CLERK: Government Exhibit 74 and Government Exhibit 74-A through 74-F inclusive received in evidence.

(So marked.)

(Continued next page.)

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Q Mr. Lamberton, I want to show you two checks which was part of Exhibit 74 in evidence, dated January 14, 1972 and August 25, 1972. To whom are those checks drawn, sir?

A William A. Shea.

Q Were those checks drawn by you as per Mr. Chadwick's instructions?

A Yes.

Q Did you ask why you were drawing a check to Mr. Shea?

A Yes, and I was told to repay Mr. Shea for an advance that he made for contributions in the bank's name.

Q I also want to show you a check dated December 29, 1972. To whom is that check drawn?

A Security National Bank.

Q Was that check drawn by you at Mr. Chadwick's instructions?

A Yes.

Q Did you ask Mr. Chadwick why you were drawing a check payable to the bank?

A Yes.

Q And what if anything did he tell you, sir?

A This was to repay the bank for contributions they made in error.

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Q Did he say anything else about that?

A No, that's about the general substance of it.

MR. KATZBERG: Thank you.

May I have one moment?

THECOURT: Yes.

(Pause.)

Q Just one more series of questions.

You indicated that you are currently working where?

A Elizabeth, New Jersey, National STate Bank.

Q Prior to that you worked for Chemical?

A Correct.

Q Prior to working for Security, whom did you work for?

A Franklin National Bank.

Q Did you work for any other banks prior to that?

A Manufacturers Hanover.

Q Were you ever requested at any of those other banks to ever make a contribution on behalf of the bank?

A No.

MR. RYAN: I object to this, your Honor.

MR. BANNIGAN: I do not object, your Honor.

MR. NAFTALIS: I do not object.

Q Were you ever given any salary increases at

any of the other banks to make political contributions?

A No.

MR. KATZBERG: I have no further questions.

MR. RYAN: I move to strike as wholly irrelevant to this case.

THECOURT: Only to the instances to which it can be applied.

MR. BANNIGAN: May counsel confer for a few minutes before we start our cross?

THE COURT: Yes.

MR. BANNIGAN: Thank you.

(Pause.)

CROSS-EXAMINATION

BY MR. RYAN:

MR. KATZBERG: Is the objection withdrawn?

THE COURT: Yes.

Q Mr. Lamberton, you worked as an officer with Frank Powell, as I understand it?

A Yes.

Q Did you have joining offices, or something like that?

A We originally had one office, we both had a desk in one big office.

Q That was at the time that he invited you or

asked you to participate in this program; is that correct?

A Correct.

Q After he asked you if you would be willing, do you recall whether or not you made up your mind then or the next day that you told him it would be all right, the next day, the next week or do you recall?

A I would say I made up my mind at that time.

Q And are you familiar with Frank Powell's reputation for honesty and integrity and trustworthiness?

A Yes.

Q What is it?

A He enjoys a high regard -- that is not the proper way. He enjoys a good reputation with other bankers.

MR. RYAN: Thank you very much.

MR. BANNIGAN: May I inquire briefly, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. BANNIGAN:

Q Mr. Lamberton, how long did you work for the Franklin National Bank?

A Twenty years.

Q And I take it, sir, when you were working for that bank you were aware that certain officers of the bank

were going to outside functions; is that not correct?

A To some degree.

Q They were going to charitable functions, business luncheons and things of that nature?

A Yes.

Q Were they not?

A Yes.

Q And, sir, do you know who paid for their tickets to these functions?

A You said"charitable"?

Q Charitable or political.

A I have no knowledge who paid for the political. I know who paid for the charitable.

Q You do know that those people went to those functions?

A Yes, I would say so.

Q A substantial number of people and a substantial number of functions?

A I was never invited to them myself.

Q That was not my question.

People from the Franklin National Bank as a matter of course of business attended those functions, did they not?

MR. KATZBERG: To the extent the witness knows.

MR. BANNIGAN: That is all I am inquiring as to.

THE COURT: It is whether or not he knows.

A Naturally they attended.

MR. BANNIGAN: I may have one other question.

(Pause.)

MR. BANNIGAN: I have no further questions.

THE COURT: Anyone else?

MR. NAFTALIS: No questions.

MR. COHN: No questions.

MR. KATZBERG: Nothing further.

THE COURT: You may step down. Call your next witness.

MR. KATZBERG: The Government calls Patricia Ann Donovan, your Honor.

P A T R I C I A A N N D O N O V A N , having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Patricia Ann Donovan.

THE COURT: Be seated, please.

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mrs. Donovan, in a loud voice so everyone in the jury can hear you, please give us your present occupation.

THE COURT: All right. Proceed.

J A M E S B R O G A N , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your full name for the record.

THE WITNESS: James Brogan.

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Brogan, in a loud clear voice, sir, so everybody can hear you, are you employed at this time?

A Yes, I am.

Q By whom, sir?

A Career Planning Corporation, Sixth Avenue, in Manhattan.

Q Prior to this employment, was there a tiem when you were employed by the Security National Bank?

A Yes.

Q Approximately when did you work for the Security National Bank?

A From October '67, until December of '72.

Q And what was your title, Mr. Brogan?

A Vice-president and personnel director.

Q Could you briefly outline for the ladies

and gentlemen of the Jury what duties you performed?

A Yes. I was responsible for the complete personnel function, the employment recruitment, benefit administration, salary administration, training, et cetera.

Q When you started at Security Bank, where were you located physically?

A The Colonial building in Melville, Route 110.

Q To whom did you report?

A Mr. Clifford and Mr. Powell.

Q I want to direct your attention, Mr. Brogan, to the latter part of 1967.

Did there come a time when you had a conversation with someone on the subject of political contributions?

A Yes, there did.

Q And with whom did you have this conversation?

A Mr. Clifford and Mr. Dowd.

Q And where did the conversation take place?

A In either Mr. Clifford's office or Mr. Dowd's office, in Huntington, the main office of the bank.

Q Either then yourself, Mr. Clifford and Mr. Dowd, was anybody else present during the course of this conversation?

A I don't believe so.

Q Tell the ladies and gentlemen of the Jury what was said and by whom?

A Mr. Clifford indicated to me that I would be receiving a salary increase of $1,700 and that this was to permit me to make contributions of $100 a month and the other $500 was to take care of the tax impact on my personal situation.

Q Was anything said about the purpose --

MR. NAFTALIS: I object to any leading or suggesting particularly with this witness.

Let him just ask who said and what was said.

THE COURT: He didn't ask him --

MR. NAFTALIS: He was trying.

THE COURT: What do you mean, trying? He has the right to ask a question.

BY MR. KATZBERG:

Q Continue and tell us who was saying what?

A As I was saying, Mr. Clifford gave the information to me. I just recounted to you.

He told me I would be requested to draw checks monthly and since located in Melville, I would send them through interoffice mail to Mrs. Jaeger.

Q Was anything else said about the political

contributions?

A Just that they were to be kept secret and that the other senior officers were going to be involved in providing political contributions, too.

Q Anything else you can recall during the course of this conversation?

A Not that conversation, no.

Q Did Mr. Dowd say anything at this time?

A He participated to a small extent but after the meeting with Mr. Clifford broke up, then Mr. Dowd filled me in on the mechanics and went over the program.

Q Prior to the time the meeting broke up between yourself, Mr. Clifford and Mr. Dowd, did you agree to participate, sir?

A Yes, I did.

Incidentally, they told me it was legal.

Q Was this a three-way conversation between Mr. Clifford, Mr. Dowd and yourself?

A That's right.

Q Did anyone say who specifically approved it as legal?

A Just that it was checked with counsel and approved as legal.

Q You say you spoke with Mr. Dowd after the meeting broke up?

A Yes.

Q Where did you speak with him?

A If it was in Mr. Dowd's office, then it was there, but if it was Clifford's office, then we spoke subsequent to that.

Q Was anyone else present during this conversation between yourself and Mr. Dowd?

A No.

Q Tell us what the conversation was?

A He went over the information I recounted and told me to draw the checks and send them in interoffice mail to Mrs. Jaeger.

Q How soon after the three-way conversation with Clifford, Dowd and yourself, did you have the two-way conversation with Mr. Dowd?

A There was a meeting after it.

Q Did there come a time thereafter when you spoke to someone else about these political contributions?

A Yes.

Q When was that?

A It could have been the same day or within days after my conversation with Mr. Clifford and

Mr. Dowd that I spoke with Mr. Powell.

Q Where did you speak with Mr. Powell?

A In his office.

Q Was anybody else present during that conversation?

A Not to my knowledge.

Q Would you give the ladies and gentlemen of the Jury, to the best of your recollection, that conversation?

A Well, I reported to both Mr. Clifford and Mr. Powell, and I went to Mr. Powell to inform him of the information Mr. Clifford provided me.

Q What did you say to him specifically?

A I told him that Mr. Clifford indicated that I would receive a raise of $1,700 and the purpose of the raise and the mechanics of sending in the contributions.

fls.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. KATZBERG: (Cont'd.)

Q Anything else you told or asked Mr. Powell?

A Yes, I was concerned that this raise not interfere with any merit increase I receive.

Q What did you say in that connection to Mr. Powell?

A I asked if this would interfere with the merit raise I was expecting.

Q What did Mr. Powell say to that inquiry, if anything?

A He said It would not.

Do you recall your salary at this time later in the year 1967?

A My starting salary which was approximately $18,000.

Q Do you recollect when you got the $1,700 contribution increase you were promised?

A Yes, there did.

Q Approximately when was that?

A I believe in January of '68.

Q Mr. Brogan, I want to show you Exhibit No. 5 already in evidence. I want you to look at that exhibit and tell us what your starting salary was in late 1967.

A $18,500.

Q Do you see listed on the Exhibit 5 in evidence the contributions increase?

A Yes. The $1,700 increase brought it to $20,200.

Q And the date of that?

A January 8, 1968.

Q By the way, Mr. Brogan, I notice that you received another salary increase on 6/18/68; is that correct? Five months later?

A That's correct.

Q What was the purpose of that increase?

A Merit increase for performance.

Q How do you know that, sir?

A Mr. Powell told me.

Q Thank you, sir.

Do you recollect after you received the $1,700 increase in January of 1968, when you began to make these political contributions?

A Yes.

Q Approximately when did you start making the contributions?

A I would guess it was in February of '68?

Q I want to show you, Mr. Brogan, Exhibit

No. 70 and 70-A for identification and I want you to look through the contents of Exhibit 70 and 70-A and tell us whether or not you regognize it.

MR. KATZBERG: While Mr. Brogan is doing that as in previous cases there are a number of void checks. If counsel wants me to offer them or look at them --

MR. BANNIGAN: We object to the offer of void checks.

MR. KATZBERG: I just wanted to call it to your attention.

MR. NAFTALIS: I take it you have taken out of exhibits any void checks you may have put in there inadvertently.

MR. KATZBERG: I attempted to.

BY MR. KATZBERG:

Q Now, do you recognize those exhibits?

A These are my checks.

Q Are those checks you wrote for politic contributions?

A Yes.

Q Does the top check refresh your recollectic as to the first payment you made?

A February 2, 1968.

Q To whom is that check drawn?

A To cash in the amount of $50.

MR. KATZBERG: At this time, your Honor, the Government offers into evidence Exhibit 70 and 70-A.

MR. RYAN: May we just see them for a second, please?

THE COURT: Show them to them.

(Exhibit shown to defense counsel)

(Pause)

MR. NAFTALIS: We've no objection as to the exhibit except there is an additional large series of checks or void or unnegotiated. As to them we would object.

MR. KATZBERG: I will not offer them.

MR. NAFTALIS: This group is the one that's void and not used.

THE COURT: All right.

MR. KATZBERG: At this time again the Government offers Exhibit 70 and 70-A in evidence.

THE CLERK: Government's Exhibit 70 and 70-A received in evidence.

(So marked)

BY MR. KATZBERG:

Q You told us on 2/2/68 the first one of those checks was made payable to cash?

A That's right.

Q How did you know to do that?

A I was informed by Mr. Dowd to draw the checks and send them to Mrs. Jaeger.

Q For how long a period of time did you continue to draw your checks to cash? Would you look through the exhibit and tell us please?

A The last one is 9/8/70.

Q During the period of time that you wrote these checks payable to cash and gave them to Mrs. Jaeger, '68 through, as you say, September of '70, did you ever know where the money was going once you gave it to Mrs. Jaeger?

A No, I did not.

Q To whom is the first check drawn after the 9/8/70 checks?

A The first check after that is drawn to Winston Hart.

Q What's the date of that check?

A October 8, 1970.

Q And how did you learn that you were to

draw your check to Mr. Hart?

A I believe Mr. Dutra informed me.

Q What's his first name, sir?

A Joseph.

Q And his position at the bank?

A Vice president in the marketing department.

Q To whom did he report?

A Mr. Dowd.

Q Did you speak to Mr. Dutra in person or over the telephone?

A I believe over the phone.

Q Did he call you or did you call him?

A He called me.

Q Tell the ladies and gentlemen of the jury what this situation was.

A That they reviewed the program with counsel and they devised a different method of handling the contributions and after the first of the next month I would be called and told who to make the checks to.

Q Did he indicate who exactly made the change?

A No.

Q Did he indicate why the change?

A Just that it was a better system.

Q Whom did he say would call you and advise

you as to whom to make the checks?

A He said a Mr. Chadwick.

Q Were you contacted by Mr. Chadwick and did he tall you to whom to draw the checks?

A Yes.

Q From that time on were each of those checks drawn by you as per Mr. Chadwick's instructions?

A Yes, they were -- no. There are two that were not.

Q Can you identify which two were not, sir?

A Those were drawn to Mr. Shea.

Q The dates, please.

A November 23rd of '70 and January 8th of '71.

Q Who told you to draw those checks to Mr. Shea?

A I believe it was Mr. Dowd.

Q Approximately when were you given this information?

A Just prior to drawing the check.

Q Was anybody else present on either occasion when Mr. Dowd told you about those checks?

A No.

Q What, if anything, did he say?

A He indicated that because we had -- the bank had borrowed some money from Mr. Shea and Mr. Shea had made a contribution on behalf of the bank, that the bank had to reimburse Mr. Shea. I had prior knowledge of that through a discussion at a meeting.

Q Who told you that previously?

A I heard Mr. Clifford and Mr. Dowd discussing the problem.

Q Mr. Brogan, do you recollect after you started making contributions in early 1968 that you played any roles with respect to these contributions in addition to writing out the checks?

A Yes.

Q Could you describe what those roles were, sir?

A Well, in the absence of a senior officer of a division, I would occasionally have to explain the political contribution program to people who were newly being included in it and also I kept records in the personnel department of the political contributions increases granted to certain individuals.

BY MR. KATZBERG:

Q Now, I want to focus on this first role -- any other roles besides those first two?

A No, just my own participation.

Q On this first role, informing the officers of their participation in the club, approximately when did you begin performing that role, if you recall, sir?

A It was either late '69 or early '70, I think.

Q Who informed you of this, sir?

A Mr. Clifford.

Q And was anybody else present when you and Mr. Clifford had this discussion about that role?

A I don't recall.

Q Do you recall what, if anything, Mr. Clifford told you in substance?

MR. NAFTALIS: Time and place, please.

Q Where was the place?

A I believe in the Huntington office.

Q And no one else was present?

A No.

Q Give us in substance what Mr. Clifford told you with respect to this role.

A He told me in the event the senior officer

of the unit was not there, that it would be my responsibility to explain the salary increase to the individual, particularly where it was both a merit and participation increase.

Q Now, did you discuss this role with anybody else other than Mr. Clifford?

A I believe I discussed it with Mr. Powell.

Q Approximately when did you discuss it with him?

A I guess shortly after I had my discussion with Mr. Clifford.

Q Was this conversation with Mr. Powell in person or over the phone?

A I couldn't recall whether it was over the phone or in person.

Q Could you briefly give us the nature of that conversation?

A Well, it was to inform him that Mr. Clifford indicated to me that I would be responsible for informing individuals of participation in the event the senior officer was not available.

Q What did Mr. Powell say?

A I don't recall that he said anything. He just acknowledged that he understood.

Q How were you to know which officers would be informed of their contributions increase and their club participation?

A Either Mr. Clifford or Mr. Powell would let me know.

Q Would this notification -- withdrawn.

Now, subsequent to these conversations with Mr. Clifford and Mr. Powell, did there actually come a time when you did inform various officers of the bank of their selection and the contributions increases?

A Yes.

Q Focusing on the contribution increases, were there times -- withdrawn.

You indicated that some of these increases were combined increases, part for merit and part for the club; is that correct?

A Yes.

Q How did you know, how did you learn which part of the officer's salary was given to him for the club and which part was given to him for merit?

A Well, it was a standard increase of $1.700 but Mr. Clifford and Mr. Powell would indicate it to me.

Q I want to direct your attention to approximately December of 1970.

At that time, did you known an individual by the name of Albert Primosch?

A Yes.

Q Did he work in the bank, sir?

A Yes, he was vice-president in the installment lending division.

Q Did there come a time in approximately December of 1970, when you had a conversation with Mr. Primosch about the contributions?

A Yes.

Q Was this conversation in person or was it over the phone, if you recall?

A I believe it was over the phone.

Q Did Mr. Primosch call you or did you call him?

A No, I called him.

Q Would you tell us what that conversation was at that time?

MR. NAFTALIS: May we approach the bench for a moment?

(The following occurred at side bar.)

MR. NAFTALIS: This is all hearsay.

Mr. Primosch is not a co-conspirator. He is not a defendant. Therefore any conversation

had with Mr. Primosch is the rankest of hearsay.

MR. KATZBERG: I was going to elicit only what Mr. Brogan told Mr. Primosch, and Mr. Brogan is a co-conspirator.

MR. NAFTALIS: It is still hearsay, because it is a prior statement by this witness offered for its truth.

MR. KATZBERG: No, it is not.

THE COURT: Is it being offered for the truth?

MR. KATZBERG: For the purpose of why it was said.

MR. NAFTALIS: There would be no purpose of him offering this conversation unless it was offered for the truth.

MR. KATZBERG: The hearsay problem is a confrontation problem.

He is here to do that right here and now.

MR. NAFTALIS: Any prior statements made in hearsay unless it is an exception to the rule.

His conversation with somebody else whether,half or whole, is still hearsay.

THE COURT: The exception is it is a co-conspirator making a statement.

MR. NAFTALIS: It is another co-conspirator.

MR. RYAN: This is the first witness of the alleged co-conspirators. His testimony is that he thought it was legal. There is no evidence to show that Mr. Brogan conspired to violate 610 or 656.

THE COURT: The weight to be given to it is for the Jury to decide, whether it had any merit in this case.

MR. RYAN: In my judgment, he has not established this man as a conspirator.

(The following occurred in open Court.)

THE COURT: Once again, ladies and gentlemen, we have our right to go to the side bar and objections are made to certain things, and they are not for the purpose of keeping anything from you.

As a matter of fact, when the ruling is made on the side, you have no idea whether I overruled or sustained the objection, but during the trial, you must understand that the prerogatives of a lawyer are rather high on both sides. They have a right to be forceful and stern advocates in behalf of their own clients. That makes no

differe nce whether the client is a live human being or the U. S. Government or a corporation. You have a right to give that client all its rights.

A lawyer is required also to conduct himself commensurate with the advocacy required of them without reducing the dignity of the courtroom and I have no problem here.

Failure to do so would reduce the meaningful procedures that we have instituted in our system of justice throughout the United States.

So that I want you to understand that whatever you see go on in the courtroom, draw no conclusions to the detriment of the parties, because the parties are to determine only the facts in the case and not likes, dislikes or bias or prejudices that may evolve by something that might have been done before you.

In addition to that, from time to time, I am giving you some of the law that will be applied. Later on I will give you a full statement of all of the law to be applied including the rights and obligations and purposes of an attorney, and your rights and obligations in a trial and the rights of the Court.

You may continue now.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. KATZBERG:

Q We were discussing conversations between yourself and Mr. Primosch.

A Yes.

Q Will you tell us what you said to Mr. Primosch?

A I had been informed by Mr. Clifford that he was to receive a combination increase, part merit and part political contribution increase.

I called Mr. Primosch and explained this to him. I told him the details of how much he would contribute and the part that would be to take care of his personal tax situation, and the part for merit.

I also told him that he would be contacted with regard to who to draw the checks to.

Q How did you know the amount of the increase you were to tell Mr. Primosch about?

A Mr. Clifford indicated that to me.

Q How were you to know who to call?

A Mr. Clifford told me to call Mr. Primosch.

Q Subsequent to that conversation, did you

report any information to Mr. Clifford?

A Yes. I told him I informed Mr. Primosch and he was agreeable to it.

Q Do you know an individual named Robert Vandermark?

A Yes.

Q Did he work for the bank?

A Yes.

Q What was his title?

A Senior vice-president in the lending division.

Q I want to refer your attention to approximately December of 1970.

Did there come a time when you spoke to Mr. Vandermark with respect to political contributions increases?

A Yes.

Q How did it come about that you spoke to Mr. Vandermark?

A The club membership was being increased and individuals were being granted increases. Some of those individuals were in the lending division.

I tried to contact the senior officer of the unit, Mr. Bradley. Since he was absent, I went to

his next man, Mr. Vandermark and directed him to communicate the increases and information with regard to the contributions to the people concerned.

Q Who were the people concerned?

A Mr. Mause and Mr. Hadley?

Q M-a-u-s-e?

A Yes.

Q And H-a-d-l-e-y?

A Yes.

Q How did you know Mause and Hadley were to be given these combined increases?

A I had been informed by Mr. Clifford.

Q What if anything did you say to Mr. Vandermark?

A I told him that they were -- I toldhim that they were calling him because Mr. Bradley was absent and that I had been instructed to -- by Mr. Clifford to have him communicate to the two individuals concerned, the increase, the part that was for merit and the part for political contributions, and details of the contribution arrangement.

Q You indicated this was a combination increase; is that correct?

A Yes, sir.

Q Do you remember the total amount of the

increases for Hadley and Mause?

A Not offhand. It could have been about $3,000.

Q You have no specific recollection?

A No, sir.

Q You indicated just a few moments ago around 1970, a number of new people were brought into the club.

A Yes.

Q When did you first find out about that?

A I heard a conversation between Mr. Dowd and Mr. Clifford at a management meeting where Dowd indicated because of the need of political contributions, the membership would have to be expanded.

MR. NAFTALIS: May we find out who else was present?

Q Other than Mr. Dowd, Mr. Clifford and yourself, can you tell us who else was present?

A It took place at a management meeting, but it was not part of the meeting. It was a conversation between the two of them. The other members of the management committee at that time, whether they heard the conversation, I am not sure.

THE COURT: Who else was present at the meeting?

THE WITNESS: I would think Spitsbart, Mr. Powell, Mr. Clifford, Mr. Dowd.

I am stumped as to who else was there. Probably some other directors.

BY MR. KATZBERG:

Q Who was privy to this conversation?

A It wasn't part of the meeting. I don't know whether anyone else heard the conversation other than myself or not.

Q Was Mr. Primosch, Mr. Hadley and Mr. Mause -- their introduction to the club -- was this part of the expansion?

A Yes.

Q In late 1970, were a number of the contribution increases partly club and partly merit?

A Yes.

Q As a result of these increases, did anything happen as a result of that?

A Yes. I was informed that the people concerned, particularly Mause and Hadley, had not understood the communication and I was directed to call them individually and go over it with them, to clear up the misunderstanding.

Q Who told you this?

A Mr. Clifford.

Q When did he tell you that?

A Within several days after the increases were agreed upon, after my conversation with Mr. Vandermark.

Q Would this be late '70-early '71, approximately?

A Yes, sir.

Q Did Mr. Clifford say anything else with respect to your calling up these officers?

A No, just that it was alleged there was a misunderstanding and I should talk to each one individually and call them up.

Q Did you call a number of individuals?

A Yes.

Q How many calls did you make?

A I don't recall, maybe 10 or 15.

Q Mr. Hadley and Mr. Mause were one of the people, officers, whom you called, you indicated; is that correct?

A Yes.

Q Did you speak to Hadley in person or over the phone?

A Phone.

Q And Mr. Mause?

A Over the phone, too.

Q What did you tell Mr. Hadley? Just what you said.

A I told him about his increase, and explained to him the $1,700 increase and the participation and contribution arrangement, and amount for taxes, and details of how he would make his contributions.

Q With respect to the other gentlemen, what did you tell him?

A I told Mr. Mause essentially the same thing.

Q Subsequent to your contact with these individuals, did there come a time when you spoke to Mr. Clifford?

A Yes.

Q When was that?

A Within a couple of days after that conversation in late '70-early '71.

Q Was this conversation with Clifford over the phone or in person?

A Phone. I told him I carried out the instructions.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. KATZBERG: (Cont'd.)

Q What did he say?

A The individuals I talked with indicated no confusion about the original instructions.

Q Did you speak to anyone else about this?

A Yes, sir, Mr. Powell.

Q When was that?

A About the same time.

Q Where did the conversation with Powell take place?

A On the phone, I believe.

Q What did you tell him?

A He indicated to me that he knew Mr. Clifford was upset and I told him I recommunicated the information and there had been no misunderstanding with the people I had talked with.

Q Did there come a time in late 1970 or early '71 that the amount of money given to certain officers for contributions was increased?

A Yes.

Q What was the new amount?

A Two thousand dollars.

Q Do you know how that came about?

A Yes, I understand there was some kickback with regard to the $1,700 increase and the fact $500 would not take care of the taxes as a result of inflation.

MR. RYAN: I object to this understanding that he had.

THE COURT: As to an understanding, I don't think it's proper.

MR. NATALIS: May that testimony be stricken?

THE COURT: Yes.

Q Did you learn whose decision this was to raise it to $2,000?

A Yes.

MR. COHN: I object unless we determine how it was communicated.

MR. KATZBERG: I'm trying to do that.

THE COURT: I will allow it. It's the same thing.

Q Who told you that?

A What was the question again?

Q Did there come a time you learned whose decision it was to make the contribution increase?

A Yes.

Q How did you learn about that?

A Mr. Powell told me.

Q When?

A Sometime either late '70 or early '71.

Q Did you ever discuss that with anybody else?

A I had been privy to conversations between Powell and Clifford precious to that about the same subject.

Q Do you know Albert Fach?

A Yes.

Q Did Mr. Fach work for the bank?

A Yes.

Q Directing your attention to late '70 or early '71, were you involved with negotiations of the hiring of Mr. Fach?

A Yes.

Q When for the first time and where did you meet Mr. Fach in terms of recruits willing to come to the bank?

A I met him in the office of Mr. Toas in Huntington?

Q Who is Mr. Toas?

A Director of the bank and also on the trust committee.

Q Who else was present in Mr. Toas's office?

A Mr. Fach and I were present for the whole meeting. Toas was there for the introductory part, Mr. Travers was there for part of it.

Q Mr. Toas left as soon as introductions were completed?

A Yes.

Q Who remained?

A I remained with Fach and subsequently Travers joined us.

Q Subsequent to this meeting with Mr. Fach and Mr. Travers, did there come a time you spoke with Mr. Clifford?

A Yes.

Q How soon after the meeting with Fach and Travers did you speak to Clifford?

A The same day or next day.

Q In person?

A In person.

Q Where?

A In Mr. Clifford's office.

Q Anybody else present?

A No.

Q What did you say to him and what did he say to you?

A I told him we interviewed Fach and found him acceptable for the position in charge of the trust department, and that we thought we would like to have him take that position, however Mr. Fach was asking for $35,000.

Q What did Clifford say to that?

A He said to offer him thirty.

Q As a result of that conversation with Clifford, did you speak again to Mr. Fach?

A Yes, and that was over the phone.

Q What did you tell Mr. Fach then?

A I communicated Mr. Clifford's offer to him and he rejected it.

Q Just what you told him.

A I told him --

MR. NAFTALIS: We don't object to the hearsay.

MR. KATZBERG: Fine.

A I told Mr. Fach that we wanted him to join us and take charge of the trust department and the salary would be $30,000 and he told me that salary was inadequate, he wanted $35,000.

Q After that did you speak to Mr. Clifford?

A Yes.

Q How soon thereafter?

A I believe it was the same day but maybe the following day.

Q What did you say to Mr. Clifford, if anything, and what did he say to you?

A I called him on the phone and told him I made the offer to Fach but Fach didn't want to accept that figure and Clifford and I discussed it and he told me to offer him thirty five with the proviso that $1,700 of that be for the political contribution club.

Q Did there come a time subsequent to your conversation with Mr. -- withdrawn.

Q Are you sure of the $1,700 figure?

A It would be $2,000. There was a lot of confusion about the amount.

Q The seventeen hundred or two thousand of the $35,000 was for the club?

A Yes.

Q Did you speak to Fach about this?

A Yes. I told him the bank's counteroffer, thirty five with seventeen or two thousand for the political contribution club and he accepted the offer.

Q Do you know a Martin Travers?

A Yes.

Q Was he an employee of the bank?

A Yes.

Q When did he come aboard approximately?

A I believe 1970.

Q What was his title?

A President.

Q Who did he report to?

A Mr. Clifford.

Q Did you ever discuss the political contributions with Mr. Travers?

A Not in that form.

MR. NAFTALIS: We object to any conversations with Mr. Travers as hearsay.

THE COURT: Yes.

Q Did you ever speak to Mr. Clifford about Mr. Travers?

A Yes.

Q Approximately when did that conversation take place?

A Well, it was, I believe, sometime in late '70 or possibly 1971 -- let's see, probably in 1971.

Q Was anybody else present?

A No.

Q What, if anything, was said?

A I informed Mr. Clifford that Mr. Travers

was very upset about the fact he had been asked to make a sizeable contribution and felt that his performance should be all that the bank should expect from him.

Q What, if anything, did he say to that?

A He was very upset about it.

MR. JAFTAL__: Objection to the characterization.

Q What did he say about that?

A He said something like he was being uncooperative.

(Continued on next page.)

MP:jk
3AM R1

Q You told us earlier, Mr. Brogan, that you played two roles with respect to the contributions, you described the first role of contacting other officers. I want to focus on the second role with respect to the records; I want to direct your attention to early 1968, around January of 1968.

Did there come a time when you had a conversation with Mr. Powell on the subject of record keeping?

A Yes.

Q Where did this conversation take place?

A I believe it took place in Mr. Powell's office.

Q Anybody else present?

A Not to my knowledge.

Q What did Mr. Powell say?

A He told me I should keep some discreet record in the personnel department, perhaps on the Visi records regarding the individuals who received contribution increases.

Q Now, did Mr. Powell give you anything at that time?

A He gave me a list of the people who were receiving increases.

Q Approximately how many names were on the list?

A I think about fifteen or twenty.

Q Other than the officers' name, could you tell us what other information was contained on that list Mr. Powell gave you?

A Other than their name?

Q Yes.

A Perhaps their title, the effective date of the increase, and fact of their contribution.

Q Mr. Brogan, how much was the amount of the increase, if you recall that?

A I believe at that time it was 2,000. Some of them could have been 1,700.

Q Do you have any specific recollection of that?

A No, I don't.

Q As a result of this conversation with Mr. Powell, what, if anything, did you do?

A I went back to my office and gave the list to my secretary.

Q Who was that?

A Mrs. Donovan.

Q What happened after that?

A I told her that we had to mark those increases in some manner. We decided on using an asterisk on the Visi records.

Q Did there come a time when the asterisks were placed on the Visi records with respect to those officers and increases?

A Yes.

Q Who did that?

A Mrs. Donovan.

Q Were they handwritten or typewritten?

A Typewritten.

Q Do you recall whether or not your name was on that list for the officers receiving the increases?

A Yes, it was.

Q Do you remember any of the other names of the officers?

A Not offhand because it was -- I think most of the senior officers at that time.

Q Now, did you actually see the asterisks on the visi files?

A Yes.

Q Subsequent to -- withdrawn.

After these fifteen or twenty-some-odd officers visi cards had been placed with an asterisk, did there come a time when more officers' cards were so marked?

A There may have been some others in the intervening time until the record keeping was taken over by the marketing department.

Q Was this about 1969, to the best of your recollection?

A I think the end of '69, yes.

Q Did there come a time when you spoke to Mr. Powell subsequent to Mrs. Donovan's placing the asterisks on the records?

A Yes.

Q What, if anything, did you tell him?

A I told him that the records had been noted as per his instructions and we decided on placing an asterisk to the right of the increase on the Visi records.

Q I want to direct your attention to approximately February, March 1971. Did there come a time approximately that period of time when you spoke to Mr. Powell and he spoke to you?

A Yes.

Q Can you give us that conversation?

A Well, I was instructed about that time that the marketing department was going to take over the record-keeping and I will not have to continue to keep the records.

Q Do you remember approximately when the marketing department took over the function?

A I think somewhere around August.

Q 1970?

A '69.

MR. NAFTALIS: Can we have the answers from the witness?

THE WITNESS: Of '70, I'm sorry. When we started to draw the checks to individuals.

Q I want to refer to approximately February, March 1971. There came a time --

MR. NAFTALIS: Can he ask the witness when he remembers the conversations and not put the date in his mouth?

MR. KATZBERG: There were so many conversations --

MR. NAFTALIS: He was there presumably and you weren't.

THE COURT: You can point out a date.

Q Did there come a time you had a conversation with Mr. Powell about the asterisks again?

A Subsequently?

Q Yes.

A About six months after September of 1970.

Q That would be March of 1971, approximately?

A Yes, somewhere in that area.

Q What, if anything, did Mr. Powell say toyou.

A He asked me if I had stopped keeping records and I said I had.

He asked me if I still had records and I said I did.

He instructed me to eliminate any reference on

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the records in the personnel department of the political contributions.

Q As a result of that, what, if anything happened?

A The asterisks were erased.

Q Did you erase the asterisks, sir?

A I don't know. I may have.

Q Do you have any specific recollection of anybody else erasing them?

A No.

Q There came a time when they were erased?

A I know they were erased, but I can't recall how it was accomplished.

Q Subsequent to those asterisks being erased, did you inform anyone of that fact?

A Yes, Mr. Powell, that it had been accomplished.

MR. KATZBERG: May I have one moment, your Honor?

(Pause.)

Q Mr. Brogan, did there come a time specifically in September of 1974 when you spoke to the Federal Bureau of Investigation?

A Yes.

Q Did there come a time thereafter in January of 1975 when you spoke to the Federal Bureau of Investigation?

A Yes.

Q Did there come a time in April of 1975, thereafter, when you spoke to me concerning this matter?

A Yes.

Q Could you tell us what you said to the Federal Bureau of Investigation in the very first meeting?

MR. NAFTALIS: Objection, your Honor.

THE COURT: What was the question?

(Whereupon, last question read by Reporter.)

THE COURT: I will sustain that.

MR. KATZBERG: I will withdraw it.

I have nothing further, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good morning, Mr. Brogan.

A Good morning.

Q My name is Gary Naftalis and I am Mr. Clifford's lawyer.

A Yes, we spoke on the phone.

Q That's correct.

Now, Mr. Brogan, I believe you indicated that you came to the bank in 1967; is that correct?

A That's right.

Q You left the bank at the end of 1972; is that

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correct?

A That is correct.

Q I take it that you left the bank because you were fired?

A Pardon me?

Q You were fired?

A That is correct.

Q Prior to your being fired, there had been an audit conducted of your department, personnel, resulting in an unsatisfactory rating; is that correct?

A I don't recall that.

Q Let's see if we can refresh your recollection.

A Okay.

(Pause)

MR. NAFTALIS: Mark this. I think it is Exhibit K.

THE CLERK: Nine-page documentmarked as Defendant's Exhibit K.

(So marked.)

Q The audit of the bank was conducted by Arthur Young?

A Yes.

Q You remember a man by the name of Vincent Chieffo who conducted the audit?

A Mr. Chieffo was, I believe, the internal auditor of the bank.

Q Now, you testified before you didn't recall that an audit had been conducted or investigation had been conducted of your department which resulted in an unflattering recommendation; is that correct?

Let's see if Exhibit K refreshes your recollection.

MR. KATZBERG: What is the date of that?

MR. NAFTALIS: February 19, 1971.

(Pause)

Q Do you remember seeing that document?

A Yes.

Q As a matter of fact, your recollection is refreshed?

A It's being, yes.

Q I didn't mean to take it away from you. Take your time and look at the whole document.

(Pause)

A Yes, sir.

Q Your recollection is refreshed as to the unsatisfactory report on the performance of your duties; is that correct?

A Yes.

MR. NAFTALIS: I offer Defendant's Exhibit K into evidence.

MR. PATTISON: We don't object. But as to relevancy --

MR. KATZBERG: We waive relevancy.

THE COURT: Fine.

THE CLERK: Defendant's Exhibit K received in evidence.

(So marked.)

THE WITNESS: Incidentally, --

THE COURT: No. There is no question before you.

THE WITNESS: I was going to --

THE COURT: No, you can't amplify anything.

Q Mr. Brogan, I would appreciate it if you answered my questions, if you will, yes or no. If you can't understand them I would be delighted to repeat them or if you can't hear me because sometimes my voice drops and I have a bad throat sometimes, you can ask to have it repeated.

A Yes.

Q There came a time subsequent to this investigative report of your department that you were demoted as Chief of Personnel?

A Yes.

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Q Is that correct?

A Yes.

Q The bank felt it was necessary to go out and get a new man for the job; is that correct?

A That's right.

Q They brought a man by the name of Robert Martin?

A Yes.

Q Your position as Personnel Director was taken away?

A Yes.

Q You were given a lower job?

A No, there was no change in my duties really.

Q They just took away your title and brought in someone else for your job?

A Yes.

Q Ultimately, the bank became dissatisfied with your performance and asked you to leave; is that correct?

A No.

Q You left voluntarily?

A No.

Q You were fired, right?

A Yes.

Q Prior to testifying here today, you spoke on a number of occasions with representatives of the United States

Government; is that correct?

A Yes.

Q You spoke with representatives of the Federal Bureau of Investigation; is that correct?

A Yes.

Q Do you recall on September 18, 1974, you spoke with FBI Agents Quinn and Egan?

Is that correct?

A That's right.

Q You spoke on January 21, 1975 with Agents Quinn and Egan again; is that correct?

A Yes.

Q You testified -- withdrawn.

You spoke with Mr. Katzberg on a number of occasions prior to testifying here today; is that correct?

A Yes.

Q You spoke to other members of the Katzberg staff before testifying here today, Mr. Pattison?

A Yes.

Q Mr. Korman?

A Yes.

Q Mr. Puccio?

A No.

Q You don't remember him?

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A No.

Q Mr. Schlam?

A No.

Q Mr. Braiford.

A I think only three people from the United States Attorney's Office I spoke to: Mr. Pattison, Mr. Korman and Mr. Katzberg.

Q On how many occasions have you spoken with Mr. Katzberg, Mr. Korman, Mr. Pattison, or anybody else connected with the United States Government about your testimony in this case or the subject matter of this case?

A I would think maybe six or seven times.

Q When was the first time you spoke to Mr. Katzberg?

A I believe it was in 1975.

Q When was the last time you spoke to Mr. Katzberg?

A Last Friday.

Q That was the last time?

A Yes.

Q How long was that session?

A I believe it was two hours.

Q He went over with you the testimony you were going to give here; is that correct?

A Yes.

Q He practiced with you the cross-examination you

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would receive?

MR. KATZBERG: I object to the suggestion.

THE COURT: I will sustain the word "practiced."

Q Did he go over with you what you might be cross-examined about?

A Yes.

Q He prepared you for it?

A Not really, no.

Q He unprepared you?

A Unprepared me, perhaps, yes.

Q I take it he took you down to the courtroom and showed you where you would be sitting?

A No.

Q He told you about it?

A He told me I should come to his office and then he would take me to wherever I had to go.

(continued next page)

Q Prior to last Friday, when was the time before that that you spoke to Mr. Katzberg or any other member of the staff about your testimony?

A I believe it was two weeks prior to that.

Q February 25th, say?

A Roughly.

Q How long was that session?

A I think about two hours, too.

Q What was the last time before that that you and Mr. Katzberg discussed your testimony and went over it?

A I think I have seen him three times since the grand jury.

Q You have seen him last Friday; is that correct?

A Yes.

Q February 25th?

A Right.

Q February 10th?

A Right.

Q And February 4th?

A Right. Four times.

Q That is four times within the last few --

A Since the grand jury.

Q Prior to the grand jury, on how many occasions did you speak to Mr. Katzberg?

A Three, maybe four.

Q How long were those sessions?

A They varied in time up to two hours.

Q When Mr. Katzberg questioned you during those sessions, did he take notes at any time?

A Yes, he did.

MR. NAFTALIS: I call for the production of the notes, Mr. Katzberg.

MR. KATZBERG: You already have them.

MR. PATTISON: May we approach the bench?

MR. COHN: Why doesn't he just produce the notes?

MR. NAFTALIS: There was a representation of no notes.

(The following took place at side bar.)

MR. KATZBERG: The only 3500 material with respect to my interview with Mr. Brogan was the April memorandum that counsel have a copy of.

Any other times that I took any notes whatsoever do not come under 3500. They are not statements of the witness.

THE COURT: Work product?

MR. KATZBERG: Of course.

MR. NAFTALIS: If your Honor please, if he takes handwritten notes reflecting what the witness

tells him, we are entitled under 3500 to them. We are not asking for his witness sheet, writing down what questions he intends to ask. We are not asking for that. We are asking for handwritten notes that he made at the time of the witness' interview or afterwards.

MR. KATZBERG: The only time was on the April date which I incorporated into the memorandum and the memorandum has been turned over.

MR. NAFTALIS: The notes are notes of what Mr. Brogan told him --

MR. KATZBERG: I didn't take notes on the other dates.

MR. COHN: That is not what the witness said.

THE COURT: Questions and answers, he is not entitled to them. It's a work product.

MR. KATZBERG: The only statement that I took from him was in April and that statement has been turned over. I had it typed up and it is dated. It's been turned over to defense counsel. They have it. They are trying to make an argument here about hiding things which doesn't exist.

MR. NAFTALIS: Where are the notes from which Mr. Katzberg typed the statement? Did he destroy them?

MR. KATZBERG: Yes.

THE COURT: That's always done. I'm not shocked about that.

MR. PATTISON: I would object strongly to comments such as Mr. Cohn's out loud. He knows that is not proper. I would ask for a charge to the effect of what must be turned over and what was turned over in this case, that the 3500material was turned over prior to when the law deems it must be turned over, and they should draw no inference from any comment such as this. And I ask it be taken out of the record and the jury be so advised now.

I also ask that all of the lawyers be advised not to make any further comment along those lines. If they feel they don't know of any record they ask to approach the bench or at lunchtime we would be glad to take care of that.

In the presence of the jury it is not a proper tactic.

MR. NAFTALIS: If your Honor pleases, we asked these people whether there were any notes and we got a categorical no. He said ask the witnesses if you don't agree. We asked the witness and he said there were --

MR. PATTISON: It's up to the Government to

ascertain whether this is work product or whether it is proper 3500 and the witness doesn't know.

THE COURT: The Government is no more limited than you are --

MR. NAFTALIS: I respectfully ask that if they are refusing to turn over to defense counsel handwritten notes that they made of interviews, I ask they be turned over to the Court for the Court's inspection and for a determination whether they come within 3500 and to be sealed if your Honor decides against it and marked as a court exhibit for appellate purposes.

MR. KATZBERG: There are no such notes. The only notes that I took were to the questions I would ask Mr. Brogan in the grand jury. Once I asked those questions of Mr. Brogan in the grand jury, the outline that I had of the questions I through away. I didn't have to keep it.

MR. NAFTALIS: Wait a minute. Is it your statement, Mr. Katzberg, that during a two-hour interview view of a witness on six occasions or seven occasions, fourteen hours, you never wrote down what he said?

MR. KATZBERG: My practice is to debrief witnesses and not to take any detailed notes right during the course of the interview. You know that is

standard practice being a former Assistant yourself.

THE COURT: You say you don't have it?

MR. KATZBERG: I don't.

THE COURT: Okay.

MR. PATTISON: I would ask for a charge along those lines.

THE COURT: Not right now.

MR. BANNIGAN: I oppose the charge.

MR. PATTISON: As to the prior comment?

MR. NAFTALIS: You should have told us in advance.

(The following took place in open court.)

THE COURT: All right, we are going to continue. You are to draw no inference whatsoever of what was discussed at the side bar or what the ruling of the Court may have been.

You may continue.

CROSS-EXAMINATION

BY MR. NAFTALIS (Continuing):

Q Mr. Brogan, during the course of the seven or so interviews with Mr. Katzberg, did you yourself take any notes?

A No.

Q After leaving Mr. Katzberg, did you go home at night and make any notes of anything you wanted to study and

remember?

A No.

Q At no time have you done that?

A No, I have not.

Q During your interviews in preparation with Mr. Katzberg and his staff, did you look at your FBI interviews?

A (No response.)

Q Did you look at the FBI reports of your interviews?

A Mr. Katzberg showed them to me once.

Q You read them, I take it?

A Yes.

Q You studied them?

A No, I didn't study them. I read them.

Q You read the grand juryminutes?

A No, I did not.

Q Were you offered the opportunity?

A I don't believe so.

Q Did Mr. Katzberg go over with you what you said to the grand jury?

A No, I don't believe so.

Q I take it you indicated -- withdrawn.

I take it, Mr. Brogan, that you were aware of the importance of being truthful when you testified under oath or interviewed by an FBI agent or a federal law-enforcement

official; is that correct?

A Yes.

Q I take it that you know it is wrong for you not to tell the truth under those circumstances?

A That is correct.

Q There came a time, did there not, on September 18, 1974, when you were interviewed by the Federal Bureau of Investigation?

A Yes.

Q And you were interviewed by Mr. Quinn and Mr. Egan; is that correct?

A That is correct.

Q You testified on this witness stand, sir, about a program of making political contributions at the Security National Bank?

A Yes.

Q You were interviewed by Mr. Quinn and Mr. Egan of the Federal Bureau of Investigation and they, too, asked you about such a program, didn't they?

A (No response.)

MR. KATZBERG: What is the date?

MR. NAFTALIS: September 18, 1974.

MR. KATZBERG: Thank you.

A I don't believe so.

Q Let me see if I can refresh your memory.

Mark this as Exhibit L, please.

THE CLERK: Yes, but before I do I must discuss something with the Court.

(Pause.)

THE CLERK: Court Exhibit K which was previously marked as K and received in evidence as K was inadvertently marked and should be correctly reflected as Exhibit L which was marked and received in evidence.

Now, we have a one-page document marked for identification as Defendant's Exhibit M.

(So marked.)

MR. NAFTALIS: I made a mistake when I said L.

THE CLERK: Thank you.

BY MR. NAFTALIS:

Q Going back to your interview with the Federal Bureau of Investigation on September 18, 1974 --

A Yes.

Q -- with Agent Quinn and Agent Egan --

A Yes.

Q Mr. Quinn and Mr. Egan told you, did they not, that the purpose of the interview which they conducted of you was to determine your knowledge of a program at the Security

National Bank whereby officers of the bank made political contributions to individual politicians or political associations; is that correct?

A I understood them to say --

Q Answer my question yes or no.

A No.

Q Did the agents tell you that?

A Not to the best of my knowledge.

MR. KATZBERG: Can the witness be shown the documents?

MR. NAFTALIS: We would offer this into evidence.

MR. PATTISON: Can you show it to the witness?

MR. NAFTALIS: I asked him whether or not he --

MR. PATTISON: Can he show it to the witness?

MR. NAFTALIS: I will show it but I offer it in evidence also.

Does the Government object to Exhibit M?

MR. KATZBERG: No.

Q Whenever you are done with it, Mr. Brogan, I don't want to rush you, but may the Clerk have it to mark it and then you can have it back?

THE CLERK: Defendant's Exhibit M received in evidence.

(So marked.)

MR. NAFTALIS: Clerks are very important people and you can't get them mad at you.

(Pause)

A Yes.

Q Now, sir, it is a true fact, is it not, two FBI agents told you that they wished to interview you about a program, what you knew about an organized program, at your former place of employment at the Security National Bank whereby officers of the bank were required by the bank to make political contributions to individual politicians or political organizations?

A Yes.

Q You were told that was the purpose of the interview by the FBI agents, weren't you?

A I don't know whether I can answer that yes or no.

Q Do you deny that the FBI agents who stated that in their official report told you that?

A I didn't write the report, but yes they did.

Q Did they tell it to you or didn't they, or can't you answer?

A I really can't answer. I misunderstood what they were talking about.

Q Did they tell it to you or didn't they tell it to you?

A I frankly -- to my recollection, that is not what they said.

Q Is it your claim that the FBI agents' report of their interview with you is inaccurate?

A My understanding of the interview is inaccurate.

Q Did you tell the FBI during this interview that you were not aware of any program that existed at the Security National Bank whereby officers were required to make political contributions; yes or no?

Did you tell the FBI agents that?

A Yes.

Q That, sir, was a deliberate lie?

A No.

Q That, sir, is an untruth, is it not?

A No.

Q Did you not testify here about a program to make political contributions?

A I understood them --

Q Mr. Brogan, just answer my questions. Mr. Katzberg will be able to bring out anything he wishes.

THE COURT: If you can't answer --

Q Obviously, if you don't understand anything -- I am not trying to trick you --

THE WITNESS: I had a conversation with them.

I can tell you what the conversation was.

Q That wasn't my question. Maybe I got you confused.

Did you not testify in this courtroom, sir, about a program at the Security National Bank whereby officers made political contributions?

A Yes.

(continued next page)

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Q And did you not tell the FBI that you knew of no such program?

A not to the best of my recollection.

MR. NAFTALIS: May I read from this interview to the jury?

THE COURT: Yes.

MR. NAFTALIS: Reading, ladies and gentlemen, from Exhibit M, which is a report to the Federal Bureau of Investigation of an interview on September 18, 1974 by Special Agents William J. Quinn and John K. Egan.

James J. Brogan was interviewed at his residence.

Brogan was advised of the identity of the interviewing agents and was advised that the purpose of the interviews was to determine his knowledge of an organized program at his former place of employment, Security National Bank, whereby officers of Security National Bank were required by the bank to make political contributions to individual politicians or political assiciations.

Brogan advised that he was vice president and personnel director at Security National Bank from October 1967 to December 1972.

Now, skipping down a few sentences --

MR. PATTISON: Objection.

THE COURT: You must read the whole thing.

MR. NAFTALIS: I would be delighted to read the whole thing but I thought I would read what I wanted to read and they could read whatever they wanted to read.

THE COURT: The entire document is in evidence. Either read the whole thing or nothing.

You can ask questions about certain portions and get answers but you cannot cut it up when you read it to a jury.

MR. NAFTALIS: He said that at the end of 1972 he was requested to submit his resignation from the bank. He advised that he does not know the reason for this request, other than to surmise that it was alleged that he did not support the president of the bank, who had been selected by chairman of the board Patrick J. Clifford. He -- Mr. Brogan -- said that he is not aware of any program that existed at Security National Bank whereby officers were required to make political contributions. He said that he did make political contributions, but he does not recall how much these contributions amounted to. He

advised that he would have his wife check through her cancelled checks and determine from them how much they amounted to.

Q The statement, Mr. Brogan, that you were unaware of any program for the making of political contributions at Security National Bank is a true statement; is that correct?

A That's right.

Q I take it you have not been prosecuted --

MR. NAFTALIS: Withdrawn.

Q I take it you know that it is a crime to lie to an agent of the FBI; is that correct?

A Yes.

Q I take it you have not been prosecuted by Mr. Katzberg or any members of his staff for any lies that you told to the FBI; is that correct -- have you been charged with a crime?

A No, I have not been charged with a crime.

Q Did anyone tell you you ever will be?

A No.

Q As a matter of fact, you have been promised by Mr. Katzberg that you won't be prosecuted for any crime you have committed; isn't that a fact, sir?

MR. PATTISON: Objection.

A No, it's not a fact.

Q You deny that you received any such promise?

A That is correct.

Q Were you ever told by Mr. Katzberg that while you could be charged with a crime it was the present intention of the United States not to prosecute you -- yes or no?

A Yes.

MR. PATTISON: Is that any crime?

THE COURT: It relates to the question before.

MR. NAFTALIS: Do you want me to have the reporter read it back?

MR. PATTISON: Could we have the prior question read back to the witness, prior to the reading.

(Record read by reporter.)

(Record read as follows:)

"Question: The statement, Mr. Brogan, that you were unaware of any program for the making of political contributions at Security National Bank is a true statement; is that correct?

"Answer: That's right."

Q And as a matter of fact, you sit here pursuant to this deal that you have talked about unprosecuted for any crime that you have committed; is that correct --

no one prosecuted you for any crime you committed, either lying to the FBI or anything else?

A I don't know if I can answer that question.

Q Have you been named as the defendant in an indictment?

A No, I have not.

Q So, you have not been prosecuted?

A That is correct.

Q By the way, when you went before the grand jury in this matter did you tell the grand jury that you had not told the truth to the FBI?

A No, I did not.

MR. PATTISON: I object to that characterization.

THECOURT: That presupposes he was asked the question.

MR. NAFTALIS: Let's see if he was.

THE COURT: If you have it in there, all right.

Q Do you recall being asked these questions and giving these answers when you testified before the FBI --

MR. BANNIGAN: Grand jury.

Q -- I mean before the grand jury -- I'm sorry.

MR. NAFTALIS: Page 3.

Q "Question: Did you speak to the FBI a while back with reference to this case?

"Answer: Yes, I did.

"Question: They interviewed you; is that correct?

"Answer: That's right.

"Question: They called you up and set up an interview and you spoke to them; is that correct?

"Answer: That's right."

Do you recall being asked those questions and giving those answers?

A Yes.

Q And you neither, in those questions nor at any other time during the course of the grand jury proceedings, told the grand jury you lied to the FBI?

MR. KATZBERG: No such question was asked.

THE COURT: Sustained. The question was never asked.

Q Mr. Katzberg never asked you that question?

A Firstly, I didn't lie to the FBI and secondly, no, I didn't answer that question.

Q Mr. Katzberg never tried to bring out your testimony to the FBI before the grand jury?

A Say that again, please.

MR. KATZBERG: Objection.

THE COURT: I will sustain that. It is not his duty as to what someone brings out in a trial or anything else.

His duty is to answer all questions put to him. If he can't answer he must and if he doesn't remember he may say that, likewise. That is the duty of a witness anywhere and that is all -- and, to be truthful.

Q Do you remember when you testified before the grand jury at the very end you were asked these questions and gave these answers?

MR. NAFTALIS: Page 69 --

A I don't have a copy of that.

Q I will read it to you and if you want to see it I will be delighted to show it to you. I don't have an extra copy.

MR. NAFTALIS: Do you have an extra copy, Mr. Katzberg?

THE COURT: That isn't necessary. Just read it to him.

Q "Question: Were there any conversations or events that we have not, to this point in time, reconstructed that you can recall that have some

bearing on the grand jury investigation hearing?

"Answer: With regard to the contributions?

"Mr. Katzberg: Absolutely with regard to the contributions.

"Answer: Not that I can recall off-hand.

"Question: Either with respect to your participation or that of other people.

"Answer: Not that I can recall off-hand."

Do you recall those questions and answers?

A They would be the same today.

Q In response to those questions by Mr. Katzberg, you did not bring to the attention of the grand jury the testimony and statements you made to the FBI?

MR. PATTISON: I object. The question didn't call for that.

MR. NAFTALIS: It did.

THE COURT: I will allow it.

Answer the question.

Did you make any response other than the response you made in those answers?

THE WITNESS: No. I answered that.

Q Now, there came a time when you were interviewed by the FBI a second time; is that correct?

A That's correct.

Q On the same subject matter; is that right?

A That is correct.

Q Which is the same subject matter about which you testified here?

A It was not the same subject matter as my understanding of the first interview.

Q Could you just answer the question, please, yes or no. Was it the same subject matter or wasn't it?

A I can't answer it.

THE COURT: I think your question demands that type of response.

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CROSS-EXAMINATION

BY MR. NAFTALIS: (Cont'd.)

Q Were you questioned by the FBI about the subject matter?

THE COURT: Just a minute, please.

All right, you may proceed.

Q You were interviewed on a second occasion by the FBI, is that correct?

A Yes.

Q On January 21, '75. Is that correct?

A Yes.

Q These were the same FBI agents Mr. Quinn and Mr. Egan who interviewed you the first time?

A Yes.

Q And in evidence now is what you told the FBI the first time?

A It's their account of what they understood me to tell them.

Q When you went there the second time they questioned you again about political contributions. Is that correct?

A Yes.

Q When you talked to people in the FBI, they called you in advance, hadn't they, on the telephone to

tell you they wanted to come to see you?

A Which time?

Q Both times.

A Yes.

Q You testified here that the contributions program in the Security National Bank was explained to you in conversation with Mr. Dowd and Mr. Clifford. Is that correct?

A Yes.

Q When you were interviewed by the FBI on January 21, 1975, isn't it a fact you told the agents that you could not recall who actually explained the program to you?

A That's correct.

MR. KATZBERG: Can the rest of the sentence be read, please, your Honor?

MR. NAFTALIS: That is the end of the sentence. I would appreciate it if Mr. Katzberg would bring out anything he wants on redirect. It was the entire sentence.

THE COURT: Let's not argue.

Please continue.

MR. KATZBERG: It's not the entire sentence.

MR. NAFTALIS: It is so.

He said however he couldn't recall who actually explained the program to him.

THE WITNESS: That was not my statement.

BY MR. NAFTALIS:

Q You deny you told that to the FBI?

A In that form, yes.

MR. NAFTALIS: May I have this marked as our next exhibit, please?

THE COURT: The whole thing?

MR. NAFTALIS: Yes.

THE CLERK: Several page document marked for identification --

THE COURT: Any objection?

MR. PATTISON: No objection.

THE CLERK: Defendant's Exhibit N.

(So marked)

Q You testified here that you had conversations with various bank employees in which you explained the contribution program to them?

A That's correct.

Q When you were interviewed by the FBI, is it not a fact you told those agents that you could not recall explaining how the political contributions program worked to any other employees of the bank, that it was

only a possibility you might have explained it to someone?

A That's correct.

Q And that interview with the FBI was January 29, 1975. Is that correct?

A Yes.

Q Prior to the time you began discussions with Mr. Katzberg. Is that correct?

A Yes.

Q Prior to the time you received any promises regarding prosecution of any crime you committed from Mr. Katzberg. Is that correct?

A No, it's not.

MR. PATTISON: I object to the form.

THE COURT: Yes.

Q When did you receive the promise about which youtestified that you would not be prosecuted for crimes?

A I didn't receive a promise.

Q What did you receive?

A It was indicated to me that the Grand Jury didn't bring an indictment against me and it wasn't the intention of the Government at this time to enter any charges against me.

Q Didn't you testify earlier that Mr. Katzberg stated to you the Government had no present intention of

prosecuting you for any crimes you committed? Didn't you answer that question --

A I answered that question, yes.

Q That statement Mr. Katzberg made to you about not being prosecuted, did that occur before or after your interviews with the FBI?

A After.

Q So, at the time you had your interviews with the FBI you had no promises or assurances or statements of any kind from Mr. Katzberg. Is that correct?

A Yes.

Q I think you have testified that in a conversation with Mr. Dowd and Mr. Clifford in 1967, you were informed that the program of contributions was legal and had been approved by counsel of the bank. Is that correct?

A Yes.

Q Do you recall when you were interviewed by the FBI on January 21, 1975, prior to your conversations with Mr. Katzberg, you told them that you did not recall speaking to Mr. Clifford, Mr. Powell or Mr. Dowd about the legality of the program?

MR. KATZBERG: Can you finish reading that sentence?

MR. NAFTALIS: But remembers at one time, -- let me start over. You are correct.

Q "He advised that he does not recall speaking to Clifford or Powell or Dowd about the legality of the program but remembers someone at one time did say it was legal to make political contributions in this manner."

Do you recall telling the FBI that?

A Yes.

Q I take it one person who has told you that it's legal when cleared with counsel was Mr. Dutra. Is that correct?

A Please repeat that.

Q Didn't you testify that you had a conversation with Mr. Dutra in which he indicated to you that matters related to the contributions club had been approved with the lawyers?

A Yes.

Q Had been approved, cleared, same word, right?

A Yes.

Q Now, when Mr. Dutra told you the matter had been approved by the lawyers , you knew who the lawyers were from the bank. Is that correct?

A It was my understanding he was talking about

general counsel. Yes.

Q That would be Shea, Gould, Climenko and Kramer -- I don't know all their names but a lot of guys. It's a big well known New York City law firm.

A Yes.

Q And Mr. Shea who is the first named partner in that large well known law firm is also a director of the bank. Is that correct?

A Yes.

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Q I think you indicated that shortly after your conversation with Mr. Dutra in which he indicated to you that Mr. Shea's law firm had put the stamp of legality on the contributions, it came to your attention that Mr. Shea himself had --

A Excuse me, there was something in the question --

Q Let me ask it again.

At or about the time when you spoke with Mr. Dutra about the legality of making political contributions having been approved by Mr. Shea's firm or general counsel --

A General counsel, that is it.

Q I stand corrected.

A The answer is yes.

Q At or about that same time Mr. Shea loaned or put up to the club or made a contribution in behalf of the club in the amount of $15,000?

A I don't know about the $15,000.

Q In some amount?

A A sizeable contribution.

Q A good sized contribution?

A Yes.

Q I take it that fact, that Mr. Shea himself was putting up money for the contributions program, and he was general counsel for the bank, would be the kind of fact that

would give you further confidence of the legality of the program?

A I never questioned the legality.

Q You always thought it was legal?

A That is correct.

Q You had further evidence of Mr. Shea's own involvement, is that correct?

A I don't recall thinking that at the time.

Q In other words, the thought didn't cross your mind one way or the other?

A No, I had been sure it was legal.

Q You said at one time during the course of your examination this morning that somebody told you something about confidentiality regarding the raises?

A Yes.

Q Is it fair and honest to say that most salary matters are confidential?

A Yes.

Q Particularly in a big bank like that?

A Yes.

Q I think a man by the name of Spitsbart came up during the course of your testimony, is that correct?

A Yes.

Q Mr. Spitsbart was a director at the bank during

the period of time you worked there?

A Yes.

Q Isn't it fair and honest to say during the course of time you worked there you had an occasion to inform Mr. Spitsbart that an employee or employees were receiving raises to help them make political contributions?

A No, I don't believe so.

Q Do you recall being asked these questions and giving these answers in response to Mr. Katzberg's questions before the grand jury --

MR. KATZBERG: What page?

MR. NAFTALIS: Beginning of page 67.

Q "Question: Did you ever discuss this matter with Mr. Spitsbarg?

"Answer: Probably, yes."

This matter being the question of people getting raises.

MR. KATZBERG: That is an unfair assumption.

MR. NAFTALIS: Well, it's the next question.

Q "Question; Did you ever discuss the fact people were being reimbursed with Mr. Spitsbart?

"Answer: I believe I may have.

"Question: Do you recall the conversation?

"Answer; No, I don't offhand.

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"Question: Do you remember approximately when it took place?

"Answer: I believe probably in 1970.

"Question: What was the context?

"Answer; I believe it was probably about the time when they were increasing the number of people in the contribution club.

"Question: What did you say to him and what did he say to you in essence?

"Answer: In essence, I believe it was merely a matter of informing him that certain salary increases were the result of people being included in the contribution club.

"Question: What did he say?

"Answer: I don't recall him saying anything.

"Question: Was he surprised? Was Mr. Spitsbart surprised that people were being reimbursed for this contribution?

"Answer: I don't recall him responding.

"Question: This was one of the officers salary review committee meetings?

"Answer: I believe it was.

"Question: You were discussing a given officer's salary increase?

"Answer: That is correct.

"Question: In that context, you told Spitsbart that part of that officer's salary was for the contribution club, is that correct?

"Answer: I believe so, yes."

Do you recall being asked those questions and giving those answers?

A Yes, I do.

Q Mr. Brogan, I believe you indicated a few moments ago in response to one of my questions that you consider the making of the contribution to be perfectly legal and proper, is that correct?

A That is correct.

Q I take it that as far as you are concerned you made no attempt to go out to break any laws, is that correct?

A That is correct.

Q You didn't conspire, knowingly conspire, to commit federal criminal election law violations?

A To my knowledge, no.

Q To steal money from the bank?

A No.

Q Did you embezzle any money from the bank?

A No.

Q Would it surprise you to learn that Mr. Katzberg

in a document filed in the Court says you are a conspirator to conspire to commit those criminal acts?

A No, it wouldn't.

Q Even though you didn't do them?

MR. KATZBERG: I object to that.

THE COURT: The question is bad.

MR. NAFTALIS: I will withdraw it.

Your Honor, may I have a moment?

THE COURT: We are going to recess now. Why don't we recess until 2:15.

(The jury left the Courtroom.)

MR. BANNIGAN: Your Honor, we request the Government not speak to Mr. Brogan while he is on cross-examination.

THE COURT: They won't. Don't.

MR. PATTISON: Oh --

MR. BANNIGAN: I am making a request, I am not saying you will.

MR. PATTISON: Can't he go out to lunch now?

THE COURT: Absolutely, just don't talk about the case to anyone. Okay.

(Recess was taken at this time until 2:15 o'clock p.m. this afternoon.)

AFTERNOON SESSION

2:30 o'clock p.m.

(The following took place in the absence of the jury.)

MR. KATZBERG: Judge, just a couple of preliminary matters. You might recall that Mr. Ryan asked me to search all the FBI interviews to see those people interviewed with respect to the -- the business cards and the erasures. And I produced a number of them this morning. And in a rather cursory inspection over the luncheon period, I found an opportunity to search my files and I found three more. I've shown them to Mr. Ryan during this brief recess now. And I would like to have the three of those additionally marked.

THE COURT: All right, mark them.

MR. PATTISON: Your Honor, we also found during lunchtime today that Mr. Martin -- a Mr. Robert Martin whose first interview form is here, and the only interview as far as we know which he had in -- which he states that he was asked to join the club at one time but did not, and other than make three or four contributions pursuant to the club, as I recall the statement. But he did not get a raise and he did not join the club. We want to bring that fact out now.

We have also in the light of this fact searched all of the other 302's that we have in the entire case and can find no other instance of anyone having been asked to join the club and who said no.

MR. KATZBERG: That hasn't already been provided.

MR. PATTISON: With the exception, I believe, there was Travers and --

MR. KATZBERG: Singleton.

MR. PATTISON: Corriss.

MR. KATZBERG: Well, I made the statement on Corriss.

May I say that the three witnesses whose FBI reports are being turned over, as well as the other FBI reports, those people were never in the grand jury, your Honor. They were just interviewed by the FBI. When they said they knew nothing about the matter, there was nothing further.

So may I ask that those three documents be marked.

THE CLERK: Three-page document marked for identification as Court Exhibit No. 22.

Two-page document marked for identification as Court Exhibit No. 23.

Two-page document marked for identification as Court Exhibit No. 24.

MR. KATZBERG: Your Honor, I would like to substitute clean copies of the FBI report of Mr. Brogan. The copies that Mr. Naftalis used have underlinings on them.

MR. BANNIGAN: Fine.

THE COURT: Yes. I saw them.

MR. KATZBERG: If it is going to the jury, it should be a clean copy.

MR. COHN: Your Honor, can we get copies of the exhibits that have been marked for identification.

MR. KATZBERG: They are Court exhibits.

MR. NAFTALIS: They should be Brady material.

MR. COHN: Particularly Martin's statement where he was asked to join and he did not join. Can we get a copy of that?

THE COURT: Photostat it downstairs.

He will photostat it.

MR. COHN: Thank you.

THE CLERK: At your direction.

THE COURT: I don't know anybody else's.

All right.

MR. NAFTALIS: Your Honor, in connection with this, we had a representation when we were informed by the Government -- we made a motion for disclosure of the names of their witnesses pursuant to the

Canone (phonetic) case and we were given a list of witnesses.

THE COURT: I don't know what happened to mine. I think someone took it from my desk.

MR. NAFTALIS: I will give you my copy. One was a Steven Corriss. The Government told us on the Monday before the trial that they no longer were going to call Mr. Corriss, and that they mad e a disclosure that Mr. Corriss said that any raise that he received was not in -- as a quid quo pro as to the making of a contribution. Therefore, his statements are exculpatory. And we would ask that Mr. Corriss' grand jury and FBI reports or any other reports they have be turned over to us.

MR. KATZBERG: Without admitting that they are exculpatory or anything -- I don't believe they are. But we will be happy to provide Mr. Corriss' grand jury testimony and otherwise 3500 material had he been called.

MR. NAFTALIS: We would also ask through your Honor to produce to counsel for the defense copies of any statements of grand jury testimony or whatever of any witness who was interviewed either by the FBI and or the grand jury or Mr. Katzberg who indicated that although -- although he was a contributor, he received

no raise for his contribution as to any quid pro quo. In othe words, in the same way that Mr. Corriss did. And if there are any other witnesses like that who told the grand jury or the FBI, that I think we should be entitled to their -- to their statements also.

MR. PATTISON: First of all, I don't see how that is in any way, shape or form Brady.

MR. BANNIGAN: I think it's Brady. Very simply, that these were people who were not coerced. And obviously the Government is going to contend part of this program was coercion.

MR. PATTISON: No. It is not a factor --

MR. KATZBERG: Coercion is not an element of the crime.

MR. PATTISON: It is not.

THE COURT: I don't know what coercion --

MR. BANNIGAN: If these people join voluntarily--

THE COURT: The element of coercion, as I read the statute, is that certain agencies or individuals who are employed by those agencies are not permitted to make political contributions. That's what it says.

MR. PATTISON: Compensation is the sole issue Whether it was voluntary or not.

THE COURT: Nothing to do with legal -- or believing it to be legal. That is not the purpose of

the statute. The purpose of the statute says the corporation shall not make political contributions under the federal --

MR. KATZBERG: Unless it is voluntary.

MR. NAFTALIS: Let me take care of this. There is one thing which Mr. Bannigan was averting to. There is a proviso in the statute, which I am sure your Honor -- I know your Honor is aware -- which says provided that this exception shall not prohibit banks, corporations, labor unions, et cetera, from setting up funds.

THE COURT: Voluntarily.

MR. NAFTALIS: For which employees solicited to make contributions --

THE COURT: Sure.

MR. PATTISON: Right.

MR. NAFTALIS: Therefore, anybody here who voluntarily makes a contribution --

THE COURT: Providing it's his own funds.

MR. NAFTALIS: Well, your Honor, there isn't --

THE COURT: Provided it's his own funds.

MR. NAFTALIS: Most respectfully, that is the Government's theory. Their theory may be valid.

THE COURT: That's the statute's theory.

MR. NAFTALIS: No, your Honor.

A 530

THE COURT: You couldn't possibly prevent anybody in the United States from giving a political contribution if they wanted to. The Government recognizes that themselves by putting that in an income tax return. That is not the purpose of the statute. The purpose of the statute was to prevent certain agencies like a corporation, individuals employed by that corporation, unions or otherwise from giving political contributions.

If a person who belongs to a union goes out and wants to contribute to everybody who is running in the United States, no one can stop him.

MR. BANNIGAN: If his union wants to pay him a hundred thousand dollars a year --

THE COURT: I don't know if that is part of it.

MR. BANNIGAN: I think it is.

THE COURT: The crux of the case is, where does the contributions come from and who does it belong to [illegible] it voluntarily made.

MR. PATTISON: If that hundred thousand dollars is given solely and specifically for him to make political contributions, then --

MR. BANNIGAN: It is an issue of --

MR. NAFTALIS: Which is an issue of fact.

MR. PATTISON: Right.

THE COURT: Sure.

MR. BANNIGAN: The jury must find that it was not voluntary.

THE COURT: Of course.

MR. BANNIGAN: Then we --

THE COURT: They are not contesting in this case, as I understand it, that the person gave their money. They are contesting the fact that there are-- there was a certain scheme made in which money was funneled or funded through another organization like a separate special account, which moneys directly could be traced to a person to evade the law. As I understand the case --

MR. KATZBERG: That's correct.

THE COURT: I have been sitting up here for a long time and I know that's what they are saying.

MR. NAFTALIS: I agree, but --

THE COURT: Thank you. That's all.

MR. NAFTALIS: But can I add something?

THE COURT: If you want. As long as it doesn't modify what I said about the law.

MR. NAFTALIS: It adds.

THE COURT: All right.

MR. NAFTALIS: I am trying to add something, not to diminish.

Your Honor is right. But I think one thing we have here is this. It's clear, even from the concession of Mr. Katzberg's opening, that some people who are club members receive no reimbursement of any sort from the bank. Obviously, there can be nothing unlawful about their contributions.

THE COURT: If it is their money. Absolutely not.

MR. NAFTALIS: Mr. Corriss told the Government that any contributions I made was not the part of any reimbursement or quid pro quo.

That is what you told us in the record.

MR. KATZBERG: I will stand by the statement in the record and not the characterization of it.

MR. NAFTALIS: Well, I will stand on your statements and not your recollection of it.

I want to know quite simply whether or not there are a large number of people who are identified to be contributors. The Government has no intention of calling all of them by any stretch of the imagination. There are others who contributed into this organization. And I want to know whether these others who contributed --

THE COURT: That is not the crux of it.

MR. NAFTALIS: No, your Honor.

A 533

THE COURT: The crux is whether or not the person voluntarily made contributions from sources of funds belonging to themselves or whether or not within the scheme which the Government charges they made voluntary contributions, and directly tracing those moneys to a scheme and design of the parent association, which would be the bank.

MR. NAFTALIS: But it seems --

THE COURT: As I understand it.

MR. PATTISON: Right.

MR. NAFTALIS: If your Honor please, suppose the Government puts on ten witnesses.

THE COURT: I don't want to suppose. That's where I get into trouble, when I start to suppose. I am taking the facts in this case -- they are. I will take your side of the case, if I understand your defense, if you have one. And I will tel lyou distinctly what I believe it to be. And as I understand the Government's position at this time, it is exactly as I said it is. Now, if I am wrong, I wish somebody would tell me.

MR. NAFTALIS: If your Honor please, there is --

THE COURT: I don't want to belabor this. I would rather have the testimony. It doesn't make any difference what I say at this point. If it is --

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MR. NAFTALIS: The Government has put on a number of witnesses who claim they made contributions in exchange for certain compensation. If there are a number of people who made contributions and did not receive any consideration for making those contributions, number one, their contributions, of course, are legal.

Secondly, they cast doubt on the credibility and voracity of the Government witnesses. Because if you produce a large number of witnesses, and if there are a large number of other witnesses who told the Government, we weren't reimbursed, that cast real doubt on the credibility of the Government witnesses who said they were. And I think under any definition of Brady, we are entitled to that.

MR. PATTISON: May I say that --

THE COURT: As far as the $1,700 is concerned.

(Continued next page.)

MR. PATTISON: May I say this? We have told of every person that we know of who fits into that slot. I believe there about two or three of them. But to take it further and say that we also must now get their 3500 material -- even though they aren't being called, we must get every statement that they have ever made, Grand Jury minutes, the -- just as has been said here, the operative facts are, who are these people. We have told you who. That's it.

THE COURT: I think the one thing that they are probably asking is if there are people who made statements that each contribution they gave was voluntary, even though they are employees of the bank, that they very well may be entitled to them. If you have them. If you don't have them, that's something different. But I would say they would be entitled to that. Because they are entitled to show that somebody in the bank was doing it of their own will and volition.

MR. PATTISON: We have. And we have told them that.

THE COURT: All right. You have told them that.

MR.KATZBERG: And have given them their name.

THE COURT: You have given their names. That's all you are entitled to. You are entitled to their

names.

MR. BANNIGAN: Is it my understanding that to the extent that the witnesses have testified that they received a sum of money from the bank, that you are going to preclude the defense from establishing --

THE COURT: You know, there's nothing worse than when a lawyer starts off by saying that. I haven't done anything. The one thing that a lawyer -- don't pre-assume and say, are you going to preclude me from -- why don't you wait and see and let that testimony come in. If it does come in, I will rule on it. That's one pre-assume I'm going to -- I am going to draw an inference as to a statement that what I believe the issues to be and that's all.

MR. BANNIGAN: If it goes to the question of --

THE COURT: There is no question. There is no argument. I have ruled on the request.

MR. BANNIGAN: Thank you.

MR. KATZBERG: Can the clean copies be substituted?

THE COURT: All right.

MR. NAFTALIS: Put an N.

THE CLERK: N will be received.

MR. KATZBERG: In evidence. No objection.

THE CLERK: Shall I bring in the jury.

THE COURT: Yes.

(Whereupon, the jury entered the courtroom.)

J A M E S B R O G A N , having been previously duly sworn, testified further as follows:

THE COURT: All right, let's start.

MR. NAFTALIS: Your Honor, without objection from the Government, I understand that I would offer into Evidence Exhibit N.

MR. KATZBERG: No objection.

THE CLERK: Defendant's Exhibit N received in Evidence.

MR. NAFTALIS: Thank you very much.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Now, Mr. Brogan, I think you indicated you came to the bank in the fall of 1967; is that correct?

A That's correct.

Q Do you recall what precise date it was?

A I believe it was the end of October.

Q And when you came to the bank in the end of October, 1967, you were in a probationary status; is that correct?

A That's correct.

Q Why don't you explain to these ladies and

gentlemen of the jury what that means.

A Well, most employees in most banks are hired on a probationary status. Theoretically, it's a time when the company can determine whether it wants you to stay or whether you want to stay with the company. However, it's primarily a kind of mechanical thing with officers.

Q How long was the probationary status? What -- withdrawn. Let me start again.

What was the general practice at the Security National Bank as to length of time for probationary status?

A Well, for clerical employees, it was about three months. Theoretically, for officers, it was three months, too.

Q Now, who had hired you to come to the bank? Who was the one who recruited you?

A Mr. Powell recruited me, because I think he and Mr. Clifford. And Mr. Powell hired me.

Q Now, you indicated that you had a certain conversation in December of 1967; is that correct?

A I believe it was December. But it was sometime between October and January.

Q And at that time you were a probationary employee at the bank?

A Theoretically.

Q When you were hired, you were told you were on

probation?

A No, I was not.

Q Wasn't that the practice? Let me start again.

It was your understanding that the practice of the bank was that someone in your position who was in the bank approximately five or six weeks at that time as a Vice President, was a probationary employee; is that correct?

A As a personnel officer, I would agree with you. But that is not what was told to me.

Q You were not a probationary employee?

A Nobody ever said that you were on probation. No.

Q O.K. Now, there came a time, I think you indicated in 1969, when Mr. Travers became President of the bank; is that correct?

A That's right.

Q Mr. Clifford relinquished his duties as President and assumed the role of Chairman; is that correct?

A Yes.

Q Prior to that time, the Chairman of the Board of the bank had been a Mr. Maas?

A Yes.

Q So when you came to the bank in 1967, Mr. Maas or --

A Maas.

Q Maas or Moss?

A Maas or Moss.

Q You would know. Maas.

A He was Chairman.

Q He called himself Moss?

A Or Maas.

Q Or Maas.

A He was a fine gentleman. He didn't discriminate one way or the other.

Q Well, we will call him Maas for today.

A All right.

Q Mr. Maas was the Chairman of the Board and Mr. Clifford was the President?

A That's right.

Q Then in 1969, Mr.Clifford stepped down as President and assumed the title of Chairman; is that correct?

A He stepped up and assumed the title of Chairman.

Q Fine.

A And relinquished the title of President.

Q I agree with you. I misspoke.

A When Mr. Travers --

Q Mr. Travers came in as President?

A Chief Administrative Officer. And Mr. Clifford

retained the Chief Executive Officer's position.

Q From 1969 to 1972, Mr. Travers was the President; is that correct?

A Yes.

Q And then he was asked to leave the bank; is that correct?

A That's correct.

Q And after Mr. Travers' services were terminated as President of the bank, Mr. Johnson became the President; is that correct?

A That's correct.

Q Rex Johnson?

A Yes.

Q He's the gentleman from -- the fellow from Texas?

A Yes.

Q Tall fellow?

A Yes.

Q Like most Texans?

A Yes.

Q And then he was the President at the time, and your services at the bank ended at the end of '72?

A That's right.

Q Now, also other new people came into the bank during this period of time at the Executive level like

Mr. Stefan?

A Pretty much the whole successful management was eliminated and a new team was brought in.

Q There came a point in time when you began reporting to Mr. Stefan?

A That's right.

Q And Mr. Stefan was the Executive Vice President when you left the bank?

A That's right.

Q And he was a difficult man to deal with?

A Well, he was part of a new team. Yes. If you want to characterize that as difficult.

Q He was a very difficult, ambitious man?

A He was an ambitious man. Most people are difficult to deal with if you don't deal with them on the terms that they want you to deal with them on.

Q Now, Mr. Brogan, I think you brought out earlier that you were discharged from the bank; is that correct? At the end of 1972?

A That's correct.

Q Did you ever tell anybody that the reason you left the bank was not because you were fired, but because you wanted to enter your own business?

A Oh, I would believe that I would not go around

telling people that I was fired. Particularly because I wasn't particularly aware of the reason. And if it's as you try to infer, I certainly wouldn't do that.

Q So the answer is that you did? Yes, to my question?

A The answer is I told people that I entered my own business, yes.

Q You did not disclose the fact that you were fired?

A That's right.

MR. NAFTALIS: Will you mark this as the next exhibit.

THE CLERK: Four-page document marked for Identification as Defendant's Exhibit O.

Q Mr. Brogan, I show you what has been marked as Defendant's Exhibit O for Identification. I ask you, sir, if that is your signature on the last page.

A That appears to be my signature, yes.

Q This document -- and on the front page there are two signatures also, James Brogan. Is that your signature?

A Yes.

Q And this document is in handwriting? Is it in your own hand?

A Yes, it is.

Q You have examined all the pages now. Take your

time. Examine it.

A I saw you flip them by, yes.

Q Take your time. There is something that is not in your hand, tell me.

A O.K.

Q Now, Defendant's Exhibit O for Identification, this is your application for employment with the Republican National Bank of New York; is that correct?

A That's correct.

Q And you have identified that this is all in your own hand; is that correct?

A That's correct.

Q Now, in this application you affirm that everything -- you affirm in this application that everything was true and correct, to the best of your knowledge and belief, and that you have not knowingly withheld any facts or circumstances which may detrimentally -- I always have trouble with that word -- detrimentally affect your application; is that correct?

A Yes.

Q In other words, you affirmed in this application that you were telling the truth; is that correct?

A Yes.

Q And you would not attempt to mislead the

Republican National Bank; is that correct?

A That's correct.

Q Now, isn't it a fact, sir, instead of putting down for why you left the Security National Bank, that you were fired, you put down that you left to enter your own business; is that correct?

A You know, we have --

THE COURT: You must answer the question.

Q Is that what you did?

A Yes.

Q That wasn't the truth, right?

A That was incorrect. If you look in my record --

THE COURT: You can't volunteer.

MR. NAFTALIS: I will offer this in evidence.

MR. PATTISON: No objection.

MR. NAFTALIS: Thank you very much.

You have a copy of it?

MR. KATZBERG: We have a copy.

THE CLERK: Defendant's Exhibit O received in Evidence.

MR. PATTISON: May I see yours for a moment?

MR. NAFTALIS: Certainly.

Q Now, it's clear, is it not, that you have testified on a number of occasions -- I don't mean to embarrass

you -- that you were fired from the Security National Bank?

A No, sir, it is not clear.

Q You were not fired?

A My record at the Security National Bank will contain a letter of resignation which was requested by the bank.

Q Did you not testify here this morning on cross-examination that you were fired? Yes or no?

A Yes, I did.

Q And were you not -- Did you not leave the bank because they asked you to leave -- that is, they terminated -- that is, they fired you? Yes or no?

A They asked for my resignation, which I gave them.

Q It was not an act of free choice of your own?

A No.

Q And then when you applied to the Republican National Bank for a job, which is Exhibit O, you affirmed to tell them the truth; is that correct?

A Yes.

Q It says, quote, I hereby affirm that every foregoing statement is true and correct to the best of my knowledge and belief, that I have not knowingly withheld any facts or circumstances which may detrimentally affect my application.

And you affirmed the truth of this application; is that correct?

A I affirmed that,plus the information provided verbally to Mr. Di Palma, the Chairman of the Board of Republican, and Mr. Bailey, the Executive Vice President, who had the full details of why I left Security, including the reasons that were -- the reasons that were given to me.

Q Now, Mr. Brogan, will you please answer my question. Did you affirm the truthfulness of the statement that you made in this document, Exhibit O in Evidence?

Yes or no.

A I can't answer that.

(Continued on next page.)

Q This job that you were applying for at the Republic National Bank paid $27,500, didn't it, sir?

A That's correct.

Q And you wanted that job, didn't you?

A Yes.

Q That's why you filled out the application in the manner you did?

A No.

Q And your services at the Republic Bank were likewise terminated, were they not, as they were at Security?

A By my action.

Q You were terminated, weren't you, by the management there six months after you came?

A On my action.

MR. NAFTALIS: I have nothing else of this man.

I would like to read from this document to the jury, if your Honor please.

Ladies and gentlemen, this is a four-page exhibit which says, application for employment with the Republic National Bank of New York, signed in the front two places by Mr. Brogan. Again, it's signed at the end, signature of applicant, James Brogan.

And on top of that is an affirmation:

I hereby affirm that every foregoing statement

is true and correct, to the best of my knowledge and belief, and I have not knowingly withheld any facts or circumstances which may detrimentally affect my application; that if I am appointed to a position with your bank, I will cheerfully comply with all the rules and regulations for employees, etc., etc.

And turning to page 3, it says:

"Employment record: Last names and addresses of employers."

And one of them lists the Security National Bank. Vice President in charge of personnel.

Reason for leaving: To enter own business.

I have nothing else, your Honor.

THE COURT: Anyone else.

CROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Brogan, do you recall that Frank Powell retired on May 1, 1972? Do you recall that?

A Yes.

Q You were the personnel director at that time and you handled all the necessary paperwork to effectuate that retirement?

A Yes.

Q And that those records are in the personnel

file of Mr. Powell, correct?

A Yes.

Q You will have to answer yes or no.

A I would assume so. I haven't been there in several years.

Q After he retired on May 1, 1972, he continued on as a consultant and adviser to the bank; do you recall that?

A Yes.

Q And that was pursuant to a contract between Mr. Powell and the bank, that he would be available as a consultant; do you recall that?

A Uh-huh.

Q You have to answer.

A Yes.

Q Okay. And you have never had any problems with Frank Powell in the course of your dealings with the bank, I take it?

A No, I have not.

Q Okay. And in your opinion he's an honest, fair man?

A That's what I always thought of him, yes.

Q Okay. And do you recall the time that Frank Powell asked you in the initial stages of this program to make some kind of indication that the increase -- the $1,700

increase was not for merit; you recall that?

A Are you talking about in --

(continued next page)

BY MR. RYAN:

Q '67?

A The recording of it, personally?

Q Yes.

Do you recall yourself telling Mr. Powell in words or substance: Frank, I don't want to be hurt with this $1,700 increase when I am up for a salary review?

A Yes, I went to him and discussed that with him.

Q In other words, you didn't want that $1,700 increase later interfere with your getting a normal merit increase; right?

A Yes.

Q You would like it to be shown on the records that that $1,700 wasn't for merit and shouldn't be held against you for a straight merit increase?

A No.

Q Do you recall whether Frank ever indicated to you that: We ought to make some indication here on your records that the $1,700 increase is not for merit and shouldn't be held against anybody in the future when they come up for their regular review?

A We discussed that, yes.

A 553

Q Did he tell you that?

A He told me Mr. Clifford wanted the records marked.

Q Did he in any way indicate to you that: We better have a mark on the records so that when a fellow like yourself comes up for normal salary review, that this $1,700 won't be held against you?

A Yes.

Q In other words, you wanted a salary increase for merit and didn't want someone to say you just got $1,700 a few months ago?

A Right.

Q You had Mrs. Donovan have an indication on the record that the $1,700 wasn't for normal merit increase?

A Not on my own.

Q You told Mrs. Donovan to make an indication on the record that this was not for merit?

A That's right.

Q You knew that Mrs. Donovan made some type-written asterisks --

A No. I knew it at the time.

Q These records would be regularly kept at the bank?

A Yes, regular working record of the personnel

department.

Q Can you tell us how you made these erasures?

A I don't know how it occurred.

I know I was instructed to eliminate the record keeping and whether I did it or had someone else do it, I don't know.

Q Let me show you the cards, Exhibit 39, Exhibit 5 and Exhibit 81. All right.

Your card is here, which is Exhibit 5; right?

A That's right.

Q You see where you got the increase and the erasures?

A Yes.

Q Does that refresh your recollection as to how you made the erasures, if you did?

A There was an asterisk there before and it has been erased.

Q Are you saying you may have done it or someone else may have done it?

A I don't recall how it was done.

Q Who was in the Personnel Department in '70 and '71, in charge of these cards?

A I was in charge of the record keeping in

the department and had a number of staff members with me.

I'd have to look at the records to determine who was there at that time. There were a number of people there. Any one of them I could have had do it.

Q When you were asked to make those erasures, did anyone indicate that they should be made because there is something wrong here?

A No. I was under the impression they didn't want me bringing up the fact in comparing salaries, I kept mentioning that people were in the contributions club and it wasn't fair to impair their total salary.

Q As a matter of fact, after January, 1968, when certain additional fellows would be asked to participate in the program and they got the $1,700 increase, there were no asterisks made?

A Once the marketing people took it over, no.

Q Do you recall, when you say the marketing department, do you recall a Mr. Dutra had something to do with that stage?

A Yes.

Q Do you recall this Long Island Public Affairs Club mentioned?

A Yes.

A 556

Q That occurred in the early part of 1970.

Does that refresh your recollection when you were told about this?

A Around the end of 1969 and 1970.

Q Isn't it possible the eliminating of the asterisks was about 1970, when the marketing took over?

MR. KATZBERG: Objection.

Q Can you tell us?

A First I was advised marketing was taking over and it was no longer necessary for me to keepit.

Subsequently I had another contact where I was told to eliminate any of the indications on the records with regard to the contributions club.

Q I want to direct your attention and see if you can recall when that took place.

In response to Mr. Katzberg's question, he said: Did you have a conversation during February or March, 1971?

Do you recall that?

A Yes.

Q Do you recall you said: Yes, I recall having a conversation with Frank Powell about eliminating these indications on the cars, right?

A Yes.

Q Do you have any record that would indicate the time you had the conversation with Frank about that was in February or March of 1971?

A I couldn't pin it down. I know it was a couple of months subsequent to the original take-over of the records by the marketing club.

Q That would be some time in the mid-70's?

A Latter part.

Q Is there anything else you can recall that you can refer to that would fix your recollection when you had that conversation with Frank?

A The second one --

Q No, the one Mr. Katzberg asked you, you heard in 1971.

Do you have anythin in the record that you can say: I know it was March 1971?

A No, sir, not that exist any longer.

Q You didn't construe anything he asked you to be illegal?

A I told you what I assumed.

Q Do you recall when it was you were first shown the erasures on these cards by anyone from the Government?

A Yes.

Q When was that?

A Between now and after my Grand Jury testimony and I believe it was the -- either the first or second meeting I had with Mr. Katzberg, subsequent to that when Mr. Pattison was present.

Q So you mean in preparation of this trial, he showed you the erasures?

A No. We got into a discussion with regard to my testimony and I said, as I said to Mr. Katzberg, before, if he can show me some of the records, it would trigger my memory.

He never had shown me the originals before and therefore I never talked to him about the originals. It never came up.

Q When for the first time did you tell Mr. Katzberg -- did you tell him you remember it was February or March, 1971, that you had this conversation with Frank?

A I couldn't pin it down. Yes, we discussed when it occurred.

Q Did you ever have a discussion with -- withdrawn.

First of all, you talked to Mr. Naftalis on the telephone?

A Yes.

Q But you didn't talk to me even though we talked?

A I would have, if you called back.

Q You told me your attorney told you -- your attorney advised not to talk to me?

A I told you I would check with my lawyer.

Q And you never did call back?

A I was so busy with my job.

Q Do you recall telling Mr. Naftalis that the erasures were made in 1969 or 1970?

A I don't recall that.

Q You seem to fix the events when this marketing division was taking over this whole area.

MR. KATZBERG: That's not a correct statement.

He said some months after that.

THE COURT: He can answer it.

MR. RYAN: I will withdraw the question.

Q In the Grand Jury, the records indicate that you testified, I think it is on June 11th of last year, you were not shown or asked any questions about the erasures on these cards in the Grand Jury on June 11, 1975?

A No, sir.

Q You were asked by Mr. Katzberg who put the asterisk on there or how did it come about that it was on there?

A Yes.

Q So you didn't tell the Grand Jury or you had no reason to tell them when you recall this conversation with Frank about erasures; is that right?

A That's right.

Q At no time prior to your Grand Jury appearance in June of 1975, did you ever have occasion to talk when you had the conversation with Frank about erasures?

A Right.

Q The first time you had a conversation about erasures was some time after the indictment and before this trial; right?

A Right.

Q You had the conversation with Mr. Pattison?

A And Katzberg.

Q Was there any record shown to you upon which you can look at and say with resonable certainty it was February, March, 1975?

A No, the records do not show that.

Q All right.

MR. RYAN: May I have Exhibit 78, please,

the checkbook?

Q It was May 1, 1972, that Frank Powell retired and became a consultant; do you recall that?

A Yes.

Q You were requested to make checks out by Mr. Chadwick?

A Yes.

Q 78 is one of those checks, is it not?

A This is one of the checks for the contributions club.

Q Mr. Chadwick asked you to make that out?

A Yes.

Q Did you have any conversation with Frank as to who that should be made payable?

A I don't recall, offhand.

MR. RYAN: Thank you.

I have no further questions.

THE COURT: All right, Mr. Cohn.

CROSS-EXAMINATION

BY MR. COHN:

Q My name is Irving Cohn. I am Dave Dowd's lawyer.

We have never talked, have we?

A No.

Q We have never met?

A No.

Q Did it come to your attention that Dave Dowd resigned from the bank before you did?

A I recall he resigned and went with Nassau Trust.

Q And he went there as president of that bank?

A Yes.

Q Did it ever come to your attention that anybody at Security asked him to resign?

A Not to my knowledge.

Q Nassau Trust Company is another bank in Long Island?

A Yes.

Q Up in Glen Cove?

A Yes.

Q It certainly wasn't the same size bank as the Security was?

A No.

Q Was it a small bank?

A Yes, relatively small.

Q Mr. Brogan, I -- I am going to show you a card, one of the Visi cards, admitted in evidence with my consent, and relates to Dave Dowd, Government's Exhibit 15.

I'd like you to examine it. Examine the two pages stapled to this card. Just familiarize yourself with them and refresh your recollection, please.

A Yes, sir.

Q Now, these documents that you have and I will be passing them back and forth, these documents you have just reviewed, these are all part of official bank records?

A Yes.

Q I am referring now to this white paper. This is Mr. Dowd's letter of resignation; right?

A Yes. It doesn't have his signature but it's a copy.

Q Would you read the date on the letter, the date typed in?

A August 31, 1972.

Q Is there a copy received when it came into your department, Mr. Brogan?

A Yes, September 6th.

Q There is some reference to your name on the top, Jim Brogan, Personal?

A Yes.

Q Does that indicate that this is the copy that came into the personnel office?

A Yes.

Q Do you recognize the handwriting on the bottom?

A No. I know it is not mine. It's too neat.

Q Would you agree with me, whoever wrote that did so while in your department and while it was a part of the bank's records?

A I couldn't be certain.

Q Do you recognize any of the handwriting on the yellow sheet?

A No, I recognize the signature --

Q Whose signature is that?

A Mr. Waegerle.

Q Waegerle?

A Yes.

Q Can you identify him?

A He was a subordinate officer to me in personnel in the area of payroll and benefits.

Q Is this yellow sheet you're looking at now an official form of the bank?

Do you recognize it as such?

A It was a working record of the personnel department, a checklist.

Q For what?

A For termination.

Q Of an employee?

A That's right.

Q Will you read from the sheet the record of termination, what is the termination date with regard to Mr. Dowd's employment?

A 9/22.

Q What year?

A 1972.

Q September 22, 1972?

A That's correct.

Q Would you agree with me, if you look at this, that on that date Mr. Dowd's insurance cards were removed, his insurance cards and long-term disability card were removed because of termination of employment?

A That's what it says.

Q Is that standard when an employee is terminated?

A Yes.

Q In addition -- this is a checklist of things to be done, all insurance cards in the back relating to Mr. Dowd terminated this date?

A Yes.

Q Suppose we read it together.

Is it also checked off: Send conversion for life and medical insurance if eligible; and also: Send conversation for Blue Cross, if eligible?

A Right.

Q Do you agree with me?

A Yes.

Q Remove pension card pertaining to terminated employment?

A Right.

Q And there is a mark of some kind?

A Yes.

Q Some reference to: Type name, address, location and termination date and reason for leaving; other notations: Send --

A Ex-employee disability benefit card and employment card.

Q Then: Deliver to Mr. Dowd on September 22, 1972?

A Right.

Q Is this normal and usual procedure followed by the Security National Bank when an employee's employment was terminated?

A Yes. I don't recall seeing that form before, previously.

Q But this is an official form and all these actions were taken?

A Right.

Q So that on this date, all these things happened to Mr. Dowd, his insurance was terminated, and all these things?

A Right.

Q Two very brief questions:

You were involved, I believe, through some committee with salary increases of various employees from time to time?

A I was secretary of the Salary Committee of Security National Bank.

Q Wasn't it a praactive of the bank that salary increases were generally discussed towards the end of each year?

A Yes.

Q Do you recall when Mr. Naftalis asked you some questions about -- that were put to you in the Grand Jury concerning Mr. Spitsbart and he asked: Do you recall those questions and you making those answers; and you said you did?

A I recall they may have occurred.

Q Do you recall those questions were put to

you in the Grand Jury?

A Yes.

Q You recall making those answers?

A Yes.

Q Were those answers truthful?

A To the best of my ability, yes.

MR. COHN: No further questions.

MR. BANNIGAN: I have no questions, your Honor.

fols.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q You recall on cross-examination by Mr. Naftalis you were asked about your second FBI interview on 1/21/75?

A Yes.

Q Do you recall telling the FBI that day, "He said he does not recall exactly who explained the political contributions program to him but that it was either one of three people, Frank Clifford, David Dowd or Powell. He advised all three of these individuals spoke to him about the contributions program at different times while he was employed by Security National Bank." Do you recall that?

A Yes, that's correct.

Q There came a time that Mr. Naftalis asked you on cross-examination when you and I had some conversations subsequent to your FBI interview?

A Yes.

Q Do you recall it was around April 16th of 1975 when you indicated -- that you met with me?

A Yes.

Q Do you recall me showing you a number of documents and reviewing checks and a number of the Xerox

copies of the Visi cards and some other documents?

A Yes.

Q Do you recall you told me at that time it was Mr. Clifford introduced you to this club --

MR. COHN: I object. This is all leading.

THE COURT: Yes.

Recollection is not a method of redirect.

MR. KATZBERG: I ask my memorandum be marked as a next exhibit.

THE COURT: For identification and nothing else.

MR. KATZBERG: That's all I am asking.

THE COURT: You cannot tell anybody what it is.

MR. KATZBERG: No. I just want it marked for identification.

MR. BANNIGAN: Just for identification?

MR. KATZBERG: Yes, that's all.

THE CLERK: Six page document marked for identification as Government's Exhibit No. 70-B.

MR. BANNIGAN: Can I see that document once it's marked?

MR. KATZBERG: Yes.

BY MR. KATZBERG:

Q While that's being marked, this is Exhibit 73. Look at that and tell us whether or not you recognize it.

A It looks like a Security National Bank folder.

Q What kind of a folder is it, sir?

A It's a file folder with Frank Powell's name in it and a lot of documents and papers in it.

Q Do you recognize it as any particular working document at the Security National Bank or record of the bank?

A Could be a Security personal folder of Mr. Powell.

MR. KATZBERG: I ask this one document -- it's a four page document from Exhibit 73 be marked as Exhibit 73-A for identification.

THE CLERK: Four page document marked for identification as Government's Exhibit 73-A.

(So marked)

Q I show you 73-A for identification, and ask you if you recognize what that is, sir?

A Yes. It's a copy of an agreement dated March 27, 1972 between Mr. Powell and the Security National

Bank.

Q What does that agreement cover, sir?

A It covers in essence the consulting arrangement on which the bank employed Mr. Powell subsequent to his retirement.

Q Was this one of the records in Mr. Powell's personal file?

A Yes.

Q Was it kept in the ordinary course of business?

MR. RYAN: You may offer it.

MR. KATZBERG: Thank you.

At this time the Government offers Government's Exhibit 73 in evidence.

THE CLERK: So marked in evidence.

(So marked)

MR. KATZBERG: I have no further questions on redirect.

THE COURT: Any other questions?

MR. NAFTALIS: I do not have any questions.

THE WITNESS: Am I free to go, your Honor?

THE COURT: Yes, you are free.

All right. We will take a recess.

MR. NAFTALIS: I just wanted to pass these

4a documents to the jurors.

THE COURT: All right, when they come back

(Continued on next page.)

THE COURT: I am ready. Bring them in.

(The jury is in the jury box.)

THE COURT: We are ready to start.

A L B E R T W. F A C H, a witness called on behalf of the Government, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Fach, would you tell the ladies and gentlemen of the jury your current employment, please?

A Presently I am employed as a Vice President with the Chemical National Bank.

Q When did you start to work for Chemical?

A The acquisition was some time in January last year, I believe the 19th.

Q Prior to your employment by the Chemical Bank, by whom were you employed?

A I was employed by the Security National Bank.

Q Could you tell us when you started to work for the Security National Bank?

A I started employment in February of 1971.

Q Did you work at the Security National Bank continuously from that date until the date of the acquisition by Chemical?

A I did.

Q What was your title?

A Senior Vice President.

Q Were you assigned to any particular department at the bank?

A I was.

Q What was that?

A I was in charge of their trust department.

Q Who was your immediate supervisor when you started in 1971?

A Mr. Martin Travers, the President of the Bank.

Q Do you know an individual by the name of James Brogan?

A I do.

Q Was he associated with the bank?

A He was.

Q What was his title?

A I believe he was Vice President.

Q What was his area of responsibility?

A In charge of personnel.

Q You told us you came to Security in February '71; is that correct?

A That is correct.

Q Prior to that time, did you have any

conversations with Mr. Brogan concerning your being hired at the bank?

A I did.

Q Approximately when was the first conversation?

A Sometime in December of 1970.

Q Again referring to the first specific conversation with Mr. Brogan, can you tell us where that conversation took place?

A The primary conversation took place at the office of Mr. Toaz.

Q John Toaz?

A That is correct, yes.

Q Who else was present other than Mr. Toaz and yourself?

A Mr. Martin Travers and Mr. James Brogan.

Q Did there come a time when you, Mr. Brogan and Mr. Travers had a conversation with respect to your coming aboard at the Security National Bank?

A We did at that particular meeting.

Q Was salary discussed at that time?

A Briefly, it was.

Q Prior to -- withdrawn.

Did you ask for a specific salary, sir?

A Yes, I did.

Q How much was that?

A 35,000.

Q Did there come a time after this meeting in Mr. Travers' office that you again spoke to Mr. Brogan?

A Yes.

Q Approximately how soon after the meeting in Mr. Travers' office did you again speak with Mr. Brogan?

A Within ten days or two weeks I would say.

Q Was this conversation over the telephone or personally?

A Over the phone.

Q Did you call Mr. Brogan or did Mr. Brogan call you?

A He called me.

Q What, if anything, did he say to you?

A He offered me a salary which was less than I expected.

Q How much was that?

A In the area of 31 or 32 thousand.

Q What, if anything, did you say to that offer?

A I told him I was not interested.

Q What, if anything, did Mr. Brogan say to that?

A He said he had no authority to go any further.

Q Anything else in that conversation?

A That's all I remember.

Q Did there come a time when you once again spoke to Mr. Brogan?

A There did.

Q Approximately when was that, sir?

A I would say within a few days thereafter.

Q Still in December '70 or early January '71?

A I think it was mid-December, in that area.

Q This second conversation with Mr. Brogan, the third conversation in all, was that in person or over the telephone?

A Over the phone.

Q Did you call him or did he telephone you?

A He called me.

Q What, if anything, did he tell you at that time?

A At that time he told me that he was authorized to offer me $33,000.

Q Anything else?

A That's all I recall.

Q What did you say to that?

A I declined again.

Q Did there come a time when you once again spoke to Mr. Brogan?

A Yes.

Q How soon after that conversation did you speak with him?

A Within a short period of time.

Q What did he say at that time?

A He was authorized to offer me $33,000 again. However, I would receive another $2,000 and before he said that he asked me whether I was interested -- not interested -- he asked me whether I believed in making political contributions.

Q What did you say to that?

A I said I did.

Q What did he say?

A He was authorized to give me an additional two thousand dollars.

Q Did he say the purpose of it?

A He said $1,200 of which would be given to legal organizations and the balance was to take care of my income taxes.

Q Your total salary would be thirty-five; is that correct?

A Yes.

Q Did he say anything else about the contributions, if you can recall?

A Not at that time, no.

Q Did you accept the offer, sir?

A I did.

Q Thereafter, sir, did you join the bank?

A I did.

Q I want to show you what has been marked Government's Exhibit 17 for identification, Mr. Fach, and I want you to look at that, sir, and tell us if you see the starting date of your employment at the Security National Bank on that document?

A I do.

Q What is that date?

A February 1, 1971.

Q Can you tell us what the starting salary is?

A 35,000.

Q There are other entries on that document; isn't that correct?

A That is correct.

Q Your name is on the top of that?

A Yes.

Q That document, does it fairly and accurately depict your salary and title at the Security National Bank in the years you worked there, sir?

A Yes.

MR. KATZBERG: The Government would offer into evidence Exhibit 17.

MR. BANNIGAN: No objection.

MR. NAFTALIS: No objection.

THE CLERK: Government's Exhibit 17 received in evidence.

(So marked.)

Q Now, subsequent to February 1, 1971, when you started at the bank, did there come a time when you began to make these political contributions?

A Yes.

Q I want to show you the contents of an envelope marked Exhibit 130 for identification.

I want you to look at the contents of that envelope and tell us whether or not you recognize it?

A These checks represent the contents -- these are my personal checks.

Q Are those the checks you wrote pursuant to the contributions?

A That is correct.

MR. KATZBERG: I want the record to reflect among the checks that Mr. Fach has identified as Exhibits 130A through 130I, inclusive.

Q Now, to whom is that first check drawn?

A No. 135, check No. 135 is drawn to the New York Republican State Committee.

Q What is the amount?

A $100.

Q How did you know to whom to --

A What?

Q How did you know who to draw that check to?

A I was informed by Mr. Chadwick as to how to draw it.

Q Both as to payee and the amount?

A That is correct.

Q Is it fair to state each and every one of the checks were drawn by you as per Mr. Chadwick's instructions?

A Not completely.

Q Which were not?

A I can't tell you which ones, but there are occasions when he asked me to draw checks to certain Republican committees or political organizations which I had no familiarity with and I declined to do so and he came back with other requests.

Q When he came back with other requests, did you honor those requests?

A If it was acceptable to me, yes.

Q Did you ever choose yourself the payees of any of those checks?

A Not that I recall.

MR. KATZBERG: At this time the Government would offer Exhibit 130A through I, inclusive in... evidence, your Honor.

MR. BANNIGAN: No objection, but we would like to see them.

(Pause)

MR. BANNIGAN: Thank you.

MR. KATZBERG: At this time, the Government would offer Exhibit 130, 130A through I inclusive.

THE CLERK: Government's Exhibits 130 and 130A through I inclusive received in evidence.

(So marked.)

MR. KATZBERG: With that, I have nothing further of this witness.

(Pause.)

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good afternoon, Mr. Fach.

A Good afternoon.

Q My name is Gary Naftalis and I represent Mr. Clifford, Patrick Clifford.

You had certain negotiations first with Mr. Travers and then with Mr. Brogan regarding your coming over to the Security National Bank; is that correct?

A I wouldn't use the word negotiations. At our first meeting I knew what the bank was offering salary-wise and someone asked me what salary I was looking for and that was the salary I quoted.

Q Those people who were there during that meeting were Mr. Brogan and Mr. Travers; is that correct?

A And Mr. Toaz.

Q He was at the meeting, also?

A Yes.

Q There came a point in time after you had negotiations and certain conversations with Mr. Brogan that he asked you whether or not you believed in making political contributions; is that correct?

A Yes.

Q You indicated to him that was something you did believe in?

A Yes.

Q He asked you if you would be willing to make contributions?

A Yes.

Q You indicated you would?

A Right.

Q This was a totally voluntary situation?

A Yes, it was.

Q You weren't threatened or coerced or anything of that sort?

A No way.

Q You were given the option of taking that $2,000 if you wanted to make contributions; is that correct?

A I was.

Q As far as you were concerned, you would have worked for thirty-three without having made the contributions?

A That is correct.

(continued next page)

Q I think you indicated that during the course of time that you worked there you dealt with a man by the name of Mr. Chadwick?

A Yes.

Q Mr. Chadwick would call you up and ask you whether or not you would be willing to make a contribution to a particular candidate, dinner, or organization; is that correct?

A He did.

Q I think you indicated there were occasions when Mr. Chadwick asked you to write a check to somebody or other and you said you didn't want to?

A That is correct.

Q You told Mr. Chadwick either you didn't approve of that particular organization or never heard of them or had some personal reason for not wanting to do it?

A That is correct.

Q Mr. Chadwick would suggest to you the name of somebody else and ultimately give you the name of some organization, dinner or candidate acceptable to you?

A Yes.

Q Only when this candidate, organization, and the dinner were acceptable to you were you willing to write a check; is that correct?

A Yes.

Q Now, is it fair and honest to say other than your conversations with Mr. Brogan and your conversations with Mr. Chadwick that you had no conversations -- withdrawn.

Were Mr. Brogan and Mr. Chadwick the only people who discussed the political contributions to you?

A They were.

Q I take it it is fair and honest to say at no time did you ever have any discussions about political contributions with M. , Clifford?

A That is correct.

Q Never discussed them?

A Never discussed them.

Q Now, Mr. Fach, I am not very good at mathematics and you will have to assume I am right. Mr. Bannigan and I did a quick addition based on the checks in evidence that you drew in connection with the contributions you voluntarily gave and our math indicates that in 1972 your contributions totalled $950.

I take it that you kept the balance? You didn't refund any money to the bank you didn't use for contributions?

A I never refunded any money to the bank.

Q Of the 2,000 you got for contributions, you

only used that 950; the balance was used to pay your taxes and for whatever purposes you felt proper and appropriate?

A I can't say yes or no; it may have been carried forward. I never checked it out to that extent.

MR. NAFTALIS: Fine. I have nothing further.

THE COURT: Anyone else?

MR. COHN: I have one question.

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Fach, you already told us you never discussed political contributions with Mr. Clifford. Did you with Mr. Powell and Mr. Dowd?

A I never did.

Q There were some checks among those that you wrote made out to Bill Shea; is that right?

A That is correct.

Q Did you ever discuss that with Mr. Dowd?

A No.

Q Mr. Powell or Mr. Clifford?

A Never did.

Q Do you know who Bill Shea is?

A Yes.

Q Who is he?

A In charge of a large law firm in New York City

and also counsel to the Security National Bank, and member of its Board of Directors.

Q And general counsel for the Security National Bank?

A That is correct.

CROSS-EXAMINATION

BY MR. RYAN:

Q Are you familiar with Frank Powell's reputation for honesty and integrity and truthfulness?

A Yes.

Q What is it?

A Well, the best way I can express it is it's beyond reproach.

MR. RYAN: Thank you very much.

THE COURT: You may step down.

Thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. KATZBERG: The Government calls Mr. Charles Dickerson.

CHARLES S. DICKERSON, a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Dickerson, good afternoon, sir.

A Good afternoon.

Q Could you tell us by whom you are employed?

A Chemical Bank.

Q What is your position with Chemical?

A Vice President.

Q For how long have you been employed by Chemical Bank, Mr. Dickerson?

A Since January of 1975.

Q Prior to that time by whom were you employed?

A Security National Bank.

Q When did you start work at Security?

A 1955.

Q What was your title in 1955?

A Vice President.

Q Did you work at the SEcurity National Bank from 1955 to '75?

A Yes.

Q Now, I want to direct your attention to late in the year in 1967.

Would you give us your title at that time, sir?

A I'm sorry?

Q I will be happy to repeat the question.

I want to direct your attention specifically to 1967, the end of the year 1967. Do you recall what position you had at the bank in late 1967?

A Regional Vice President.

Q Can you give us your area of responsibility briefly?

A The area of Long Island, roughly from Midtown east.

Q In what connection was the bank service?

A Administrative branch system.

Q Who did you report to at the time, in late '67?

A I believe Mr. Frank Powell.

Q His title at the time was?

A Again?

Q His title?

A Comptroller.

Q Again, referring to the same period of time, late 1967, November or December of 1967, did there come a time when you had a conversation with someone on the subject of

political contributions?

A Well, Mr. Powell had a conversation with me late in '67.

Q Now, where did the conversation that Mr. Powell had with you take place?

A On the telephone. I was at my office in Port Jefferson.

Q Did you call him or did he call you?

A He called me.

Q Would you tell the ladies and gentlemen of the jury as best you can recall what Mr. Powell said to you at that time?

A At that time he advised me that I had a salary increase of $1,000 and that -- he asked if I would be interested in participating in a political donation for which I would be reimbursed at the rate of $1,700 a year in addition to the salary increase.

Q In other words, the $1,000 was for merit and 1,700 was for contributions; is that correct?

A That is correct.

Q Now, did Mr. Powell say anything about how much money you were responsible for contributions each month?

A Yes, $100 a month.

Q Did Mr. Powell say anything else at that time

you can recall with respect to the contributions?

A No, only that I would make my checks payable to Betty Jager.

Q Mr. Powell's secretary; is that correct?

A She was at that time.

Q Did you agree to participate, sir?

A I did.

Q I want to show you what has already been marked in evidence as Exhibit 13, Mr. Dickerson, and I want you to look at it, sir, and I want you to tell the ladies and gentlemen of the jury if you see those two raises that you just referred to on that document?

A Yes, I do.

Q What is the date of the first one?

A January 8, 1968.

Q That was for how much?

A $1,000.

Q That was the merit raise?

A Yes.

Q Next?

A January 8, 1968, $1,700.

Q Thank you.

Now, subsequent to receiving the $1,700 raise in January '68, did there come a time when you actually began

making contributions?

A Yes.

Q Approximately when did you start making these contributions?

A I believe it was in February of '68.

Q When you first started in 1968, to whose order did you draw those checks?

I'm sorry. Did you pay by check or some other way?

A Check.

Q To whose order did you pay?

A Betty Jager.

Q Who did you give the checks to?

A Again, please?

Q Who would you give the checks to?

A I would send them in the inter-office mail directly to her attention.

Q Would you mark the envelope?

A Yes.

Q How would you mark the envelope?

A To Betty Jager.

Q For approximately how long a period of time did you write your checks payable to Mrs. Jager?

A Well, I believe it was about two years.

Q I want to show you, Mr. Dickerson, the contents of an envelope marked Exhibit 77 for identification.

I want you to look at the contents of that envelope and tell us whether you recognize it?

A I do. They are my personal checks.

Q Are those the checks you wrote to the contributions, sir?

A Yes.

Q What is the date of the very top check?

A January 3, '69.

Q You indicated that you started making contributions in February of '68; is that correct?

A That is correct.

Q Now, do we have the checks for 1968 in there, sir?

A No.

Q What happened to those?

A I destroyed them.

Q In the normal course of your own bookkeeping?

A Yes.

Q At no one's direction? You just destroyed them?

A Right.

Q The first check we have is January '69; is

that correct?

A Yes.

Q They are payable to whom?

A Betty Jager.

Q You identified that batch of checks as the checks you wrote pursuant to the contributions. I want to show you 77A through L and I ask you to look at those and see if you recognize those.

A I wrote the check on August 17, '72 to the Suffolk County Republican Club.

Q To save time, are those likewise checks you wrote pursuant to the contributions?

A Yes.

Q Each and every one of them?

A Yes.

MR. KATZBERG: At this time, the Government would offer 77, 77-A through 77-L inclusive into evidence.

MR. BANNIGAN: No objection.

THE COURT: Mark them.

MR. NAFTALIS: No objection.

THE CLERK: Government's Exhibits 77 and 77-A through 77-L inclusive received in evidence.

(So marked.)

Q Now, you indicated that initially your checks were written to Mrs. Jager; is that correct?

A That's correct.

Q For how long a period of time did you write your checks payable to Mrs. Jager?

A I will have to refer to the checks to --

Q Why don't you look right through them? They are right in front of you.

A September of 1970.

Q Now, during this period of time, early 1968 through September of 1970, when you were sending your checks to Mr. Jager, did you ever learn where the money was going after you gave it to her?

A No.

Q Now, how did it come about that you stopped making your checks payable to Mrs. Jager in September of 1970?

A Well, I received telephone instructions from someone -- I presume it was Betty Jager -- that in the future I would not be sending the checks to her. I don't have any real recollection of who gave me those instructions.

Q Now, subsequent to September 1970, how would you know who you were going to draw your checks to?

A I would receive a call from Arthur Chadwick.

Q And on how frequent a basis would you receive a

call from Mr. Chadwick? On how frequent a basis would you receive a call?

A Usually monthly.

Q And what information, if any, would he convey to you during these phone calls?

A He would simply tell me to send a check to his attention, payable to whomever he designated.

Q Did you ever not follow his instructions?

A Did I ever not follow his instructions?

Q Yes.

A No.

Q Now, were you ever told at any time, Mr. Dickerson, that you were a member of the Long Island Public Affairs Club?

A No.

Q Were you ever told during this period of time that you worked at the bank that any of the money that you were contributing, any of the checks that you were writing, were going to the Long Island Public Affairs Club?

A No.

Q I am going to show you your endorsement on the back of a check dated August 28, 1970, and a check dated August 14, 1970. Who are the payees of those checks?

A Betty Jager, special.

Q Tell us what the endorsement on the back of those checks reads.

A Endorsement, Betty Jager, special, for deposit LIPA Club, signed Betty Jager, Assistant Treasurer.

Q Thank you, sir.

MR. KATZBERG: I have nothing further of this witness at this time, your Honor.

MR. BANNIGAN: May I inquire, your Honor.

THE COURT: Yes.

MR. BANNIGAN: Thank you.

CROSS-EXAMINATION

BY MR. BANNIGAN:

Q Mr. Dickerson, my name is Gene Bannigan. I am from the firm of Lord, Day & Lord, attorneys for the bank in this case. We met briefly outside, have we not, this morning?

A Yes.

Q Sir, when you received a phone call from Mr. Powell, I think you said in '67 or '68 concerning this contribution club -- do you remember that phone call?

A I do.

Q Did Mr. Powell direct you to join this club or ask you to join the club?

A Asked.

Q And did you have a choice in your view?

A Yes.

Q Was your joining voluntary on your part?

A It was.

Q Did you consider that there might be any reprisals if you did not join?

A No.

Q Now, sir, what was your exact position in 1967?

A Well, I believe my title was Regional Vice President in charge of the eastmost branches in Suffolk County.

Q What were your duties, very briefly?

A General supervision of the branch administration.

Q Did you supervise a number of branches?

A Yes.

Q These were out at the end of Suffolk County?

A That's correct.

Q All right.

In the course of your supervision of these various branches of the bank, did you ever receive solicitations from charities, public organizations, Boy Scouts, things like that?

A Very often.

Q With respect to -- solely to the political solicitations -- withdrawn.

What did those solicitations relate to, as

best you can remember? What type of events?

A They related usually to tickets for cocktail parties, dinner-dances, rallies of one sort or another.

Q Did you ever have occasion to attend any of these events?

A Many times.

Q While you were in attendance at these events, did you see any colleagues of yours from other banks there?

A Yes.

Q For example, what banks were also represented at these rallies and dinners?

A Banks by name?

Q Just a few, if you can think of a couple.

A Well, Franklin National Bank, Suffolk County National Bank in Riverhead, Northport Bank, First National Bank of Easthampton, National Bank of North America.

Q All right. Did you see the same people at different functions?

A Usually, yes.

Q Now, sir, when you went to these dinners on behalf of -- as a representative of the bank, did you go to these dinners to support a particular candidate or merely to let everybody there know that the Security National Bank was present?

A I was there representing the bank.

Q It was public relations; is that correct?

A That's correct.

MR. BANNIGAN: I have no further questions.

THE COURT: Any other questions of anyone?

CROSS-EXAMINATION

BY MR. RYAN:

Q I take it you are familiar with Frank Powell's reputation for honesty, integrity?

A I am sorry. I can't hear you.

Q Are you familiar with Frank Powell's reputation for honesty, integrity and trustworthiness?

A You will have to do that again.

I still don't hear you.

THE COURT: That's kind of low.

Q Are you familiar with Frank Powell's reputation for honesty, integrity and trustworthiness?

A Yes, I am.

Q What is it, Mr. Dickerson?

A I think it's -- to my knowledge, it's excellent.

MR. RYAN: Thank you very much.

MR. COHN: I have just one question.

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Dickerson, my name is Cohn. I represent David Dowd.

There were some checks that you made out to William Shea; did any of these defendants ever ask you to make out those checks?

A Did these defendants ask me?

Q Yes.

A No.

Q Mr. Clifford, Mr. Dowd, Mr. Powell?

A No.

MR. COHN: Thank you.

THE COURT: All right, sir. Thank you.

MR. NAFTALIS: I have just one question. I am sorry, Mr. Dickerson.

CROSS-EXAMINATION

BY MR. NAFTALIS:

Q I take it it's fair and honest to say that the request, sir -- let me start again.

These dinners and rallies and cocktail parties and the like that you went to, the initiative for these events came from politicians; isn't that correct?

A That's right.

Q It was the politicians -- as a matter of fact, they would really badger the banks, wouldn't they, to ask people in the bank to go to -- --

MR. KATZBERG: I object. Objection to the form.

THE COURT: Yes.

"Badger" is a bad word.

MR. NAFTALIS: Well, that's his word.

THE COURT: "Badger" is like someone going over there and breaking their arms and kicking them in the head and saying, "You'd better go."

I don't think you used that word around here.

Q Well, politicians put a lot of pressure to have people from the banks go to these events; is that fair?

A Yes, I think that's fair.

Q It wasn't the bank putting pressure on the politicians and saying, "Gee, I want to go to your affairs."

The pressure came the other way?

A Right.

Q And I take it --

MR. NAFTALIS: I have nothing else, your Honor.

THE COURT: All right.

MR. KATZBERG: Just one thing on redirect, your Honor.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q Now, looking through Exhibit 77, the checks that we have been referring to, sir, there are a number of checks that are just drawn straight out to political committees having nothing to do with everts; isn't that correct?

MR. COHN: I object to that.

MR. BANNIGAN: Objection, your Honor. The witness testified that he did not know where his checks were going. And I would object to the --

MR. PATTISON: Except to Betty Jager.

THE COURT: Why is everybody --

MR. KATZBERG: Let's take them one by one. It's very easy.

Q July 6, 1972, who is that made payable?

A Smithtown Republican Committee.

Q There's no event mentioned there, is there, sir?

A No.

Q There's no endorsement to an event, is there, sir?

A No. Other than the committee itself.

Q The same thing is true for September 5, 1972,

Br[illegible]

MR. COHN: May I ask him to go to September 6, 1971? It was made out to an invitational golf -- let's go in order. Let's not pick out some and --

MR. KATZBERG: You can inquire as to the other checks. May I inquire on these checks?

MR. NAFTALIS: What Mr. Katzberg is doing -- it's just like when we read a document. He should read the whole thing. You shouldn't mislead the jury by picking and choosing.

MR. PATTISON: Oh, objection.

MR. KATZBERG: Come on.

THE COURT: He has a right to select the --

MR. NAFTALIS: Then he ought to say to the jury that he is selecting --

THE COURT: Do you want to try his case for him? I don't think he would enjoy you trying it for him.

MR. NAFTALIS: Justice would be done, your Honor.

THE COURT: Yes. Justice is always done when everyone asks questions.

All right.

Q Isn't it fair to say that you have at least one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve sets of --

THE COURT: It's a bad question already.

Q Isn't it fair to say that a number of checks selected from a group of checks that we are talking about are just checks drawn to committees and not to events?

A Right.

Q Isn't that correct?

A Yes.

Q Now, when you went to these events, how much were the tickets, say, to one of these dinners on the average?

A Average, $100.

Q And what did you get for your $100?

A What did I get for the hundred?

Q Yes.

A Well, I was usually given a ticket to go to a -- to attend an affair.

Q You got some meal; is that correct?

A I beg your pardon?

Q Did you get a meal?

A You could call it that. Yes.

MR. COHN: I think he already stated that he had rubber chicken.

THE COURT: I established that before he sat on the witness chair. I'm sort of an expert on that myself.

Q In short, even when you went to the -- even when the contributions were for the so-called events, they were fund-raising events; is that correct?

A Yes.

MR. KATZBERG: Thank you. I have nothing further.

MR. RYAN: Just a couple of questions.

RECROSS-EXAMINATION

BY MR. RYAN:

Q Let me show you this check that comes from the same exhibit, payable to an invitational golf tournament for $200. Do you recall making that check out?

A Well, it's here in my handwriting. I don't recall it.

Q Do you play golf?

A No, I do not.

Q Okay. How about this check, No. 2381, made out to Bernard Rugieri, for $100? Have you looked at that check?

A I have looked at it.

Q Okay. Do you know that Mr. Bernard Rugieri is a partner of Mr. Shea? The firm of Shea, Limenko, Gould and Kramer?

A I wasn't aware of that.

MR. RYAN: Thank you.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q What does the endorsement of that check read?

MR. RYAN: Read it, please.

THE WITNESS: It's endorsed, Bernard Rugieri, New York City Democratic Committee.

MR. KATZBERG: Thank you, sir.

THE COURT: All right.

MR. KATZBERG: I have nothing further.

THE COURT: All right. I think you can step down now.

Thank you.

You are excused.

MR. KATZBERG: Thank you.

(Witness excused.)

THE COURT: All right. Now I don't think we have any other witnesses.

Do we have any other witnesses?

MR. KATZBERG: No.

THE COURT: All right. We have no other witnesses for today. Report to court tomorrow at ten o'clock. Keep an open mind. Do not read anything about this case. If you turn on the television or the

shortly. A 610

THE COURT: You want time to reply to it?

MR. KATZBERG: Yes, your Honor, we'd like time to reply.

MR. BANNIGAN: I was under the impression that all papers were due today. The Government was to put their memo in today and we were to put ours in.

THE COURT: It may be so I think it was that all statements were to be in today.

MR. KATZBERG: I was under the impression that we were talking about the Casey memorandum which we'll file this afternoon.

We'll do it as soon as possible.

(The Jury entered the Courtroom at 10:35 A.M.)

B E R N A R D K N O E S S , having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Knoess, by whom are you employed?

A Now?

Q Yes.

A Chemical Bank.

Q What is the title with Chemical Bank?

A Vice-President.

Q For how long a period of time have you worked with the Chemical Bank?

A Since it acquired Security National Bank.

Q When was that?

A 19 -- last year, May sixth, I think it was.

Q Prior to the time you came to the Chemical Bank by whom were you employed?

A Security National Bank.

Q Tell us when you first started to work for Security.

A 1966, November.

Q Did you work at the Security Bank continuously from November of '66 until the time Chemical took it over?

A Yes.

Q What was the title you had at the Security National Bank when you began in 1966?

A Assistant vice-president.

Q Did there come a time when you were promoted -- when you were promoted?

A Yes.

Q When was that?

A January of '67.

Q What was your title at that time?

A Vice-president.

Q Did there come a time after that when you were once again promoted?

A Yes, sir.

Q When was that?

A That was in 1971, April.

Q What was your title in 1971?

Administrative vice-president.

Q I direct your attention to the end of the year 1967. Who was your immediate superior at that time, sir? Who was your immediate superior at that time, sir?

A Mr. Powell.

Q Frank Powell?

A Yes.

Q What was his title?

A Executive vice-president.

Q Where were you located in '67 physically?

A In Melville.

Q Where was Mr. Powell located at that time?

A Huntington.

Q Directing your attention to approximately December of '67 did there come a time when someone spoke to you about political contributions?

A Yes.

Q Who was that?

A Mr. Powell.

Q Was that conversation in person or over the phone?

A By phone.

Q Did you call Mr. Powell or did he call you?

A He called me.

Q Tell us as best you can recall what Mr. Powell said to you on that occasion, if anything?

A Mr. Powell asked me if I would be part of a group that would assist -- that would contribute funds to political parties in order to have a good relationship with our depositors.

Q Is there anything else you can recall that he said at this time?

A That I would be reimbursed for whatever funds that I would dispurse myself.

Q Thinking back on the conversation could you tell us to the best of your recollection what, if anything, there was as far as discussion as to specific salaries?

A Yes. Mr. Powell told me that I would receive $1700 a year and that I would make $100 contributions each month.

reflecting on this conversation

with Mr. [redacted]. Do you recall anything said at [redacted] who

else, if anyone, was involved in this contribution organiza-

tion?

A. Well, I said there were some of the selected

officials.

Q. Did you mention anybody by name?

A.

Q. Do you recall anything else that may have

been said by you in the course of this conversation other

than what you already told us about?

A. I don't recall at this moment what other

papers I had with him.

Q. Did you give him anything at that time or

at any time?

A. Did I give him anything?

Q. Anything to him in connection to what

you were chatting about, and Mr. Powell

was perfectly within doing to do,

representing attorneys or were attorneys,

if it was known that this

was [redacted]?

A No, he did not mention any attorney's names.

Q Was there any discussion of any other increase at this time other than the $1700 increase?

A Yes, he gave me a merit increase at the time.

Q And how much was that?

A $2,000.

Q Did you agree to participate, by the way?

A Yes.

Q Did there come a time when you received the $1700 increase Mr. Powell told you about?

A Yes.

Q Please look at Exhibit 27, already in evidence. Tell us whether or not you see there the $1700 increase Mr. Powell told you about.

A I don't see a $1700 but I see my starting salary and then raising to the 20.

Q Keep going down.

A Yes, here 22 to 23,700.

Q There are two raises you received on 1/8/68; is that correct, sir?

A Yes.

Q One of $2,000; is that correct?

A Yes.

Q The $2,000 was the merit raise?

A Yes.

Q And 17 was the contribution? Is that correct?

A Yes.

Q Thank you, sir.

Now, Mr. Knoess, did there come a time when you began to make these contributions after you received this increase?

A Yrd.

Q And when you first started -- withdrawn.

When did you begin to make the contributions?

A Shortly thereafter receiving the raise in '68.

Q When you first started making the contributions what form did the contributions take?

A Cash.

Q Cash?

A Yes.

Q To whom did you give the cash, sir?

A Mrs. Jaeger.

Q How did you physically transmit these moneys to Mrs. Jaeger?

A It's personally or by a sealed envelope through the mail.

Q Through the United States Mail?

A Through the interoffice.

Q How did you know to follow that procedure?

A I was told to.

Q By whom, sir?

A I believe it was Mr. Powell who informed me to do that.

Q Now, for approximately how long a period of time did you pay these moneys in the form of cash?

A I'd say approximately a year.

Q What happened at that time, sir?

A Well, I was told to then -- no, at that time I believe that Mr. Chadwick came into the picture and requested us to make payments to him at that time.

Q Now, how did you find out about Mr. Chadwick coming into the picture?

A I don't recall.

(Continued on the next page.)

Q Prior to your writing checks as per Mr. Chadwick's instructions, did you pay money to Mrs. Jaeger in any other way other than cash?

A Yes, I think I was paying in a check to her for a period of time.

Q How did it come that you stopped utilizing cash and began to pay by check?

A I don't know. I don't remember.

Q For approximately how long a period of time did you pay these moneys to Mrs. Jaeger, whether it was a check or cash; do you remember?

A Oh, a couple of years I guess, a year or two.

Q Now, during this period of time when you paid this money to Mrs. Jaeger did you ever know where the money was going after you gave it to Mrs. Jaeger?

A In the cash?

Q Or the check.

A Well, checks were made payable -- no, I did not at that time.

Q You indicated there came a time when you began to make checks, write out checks pursuant to Mr. Chadwick's instructions; is that correct?

A Yes.

Q And how often would you receive these instructions from Mr. Chadwick, sir?

A Once a month.

Q Would he ask you these things in person or over the phone?

A By phone.

Q And on these occasions when he would call you about once a month what would he tell you?

A That he would like a check payable to such and such a payee for such and such an amount.

Q How would you physically transmit the checks to Mr. Chadwick?

A I'd put those into an interoffice sealed envelope addressed to him.

Q I want you to look at the context of Exhibit 76 for identification. I want you to look through those items and tell us if you recognize them.

A Yes, I recognize them.

Q What are they, sir?

A They are checks that I made out at Mr. Chadwick's request.

MR. KATZBERG: At this time, your Honor, the Government would offer -- withdrwan.

Q All of these checks that you're referring to

that you wrote at Mr. Chadwick's request and are Exhibit 76 did they include Exhibits 76A through F inclusive?

A Yes.

MR. KATZBERG: At this time, your Honor, the Government would offer into evidence Exhibits 76, 76A through F inclusive.

THE COURT: All right. Any objection?

MR. BANNIGAN: May we look at them, your Honor?

The bank has no objection, your Honor.

MR. NAFTALIS: I have no objection, but I take it again you have some void checks here.

Would you remove those?

MR. KATZBERG: No problem, yes.

MR. COHN: No objection, your Honor.

THE CLERK: Government's Exhibit number 76, 76 A through 76F inclusive, received in evidence.

(So marked.)

Q You mentioned that during your initial conversation with Mr. Powell when he first told you about this there was a conversation about the legality; is that correct, sir?

A Yes.

Q How did that aspect of the converstaion come up?

A I don't know which one of us started the conversation, to be honest with you. I know it was discussed and I know that Mr. Powell is the type that wouldn't do anything unless he felt it was legal.

Q Excuse me?

A I felt Mr. Powell is the one who volunteered the information, if I recall, and I know that Mr. Powell is a very thorough man and I know he probably would have this checked out fairly closely.

Q So it's your impression that Mr. Powell is the first one that broached this?

A If I recall I think he was the one who brought it up to me, and I know we discussed it. This is some years back, you know.

Q You're not sure who it was who initiated that aspect of the conversation?

A No, it's difficult, I couldn't recall.

Q I notice on your checks, the ones you have identified in this exhibit beginning on January 28th, 1971; is that correct, sir?

A Well --

Q This is Exhibit 76.

A Yes.

It starts out with January 28, 1971.

Q You indicated that you paid checks both to Mrs. Jaeger, paid to her order and checks to specific political entities prior to that time; is that correct?

A Yes, sir.

Q Where are those checks?

A Right here.

Q The ones prior to that, to those?

A I don't know what happened to those.

Q Do you have any recollection as to what happened to those checks?

A When I was subpoenaed by the FBI I gave all of the checks that I had in my possession to them.

Q Is it fair to say that the checks for the early years just in your recordkeepint you didn't keep?

A After a certain number of years I threw them away.

Q In your normal bookkeeping practice?

A Correct.

Q During the course of time that you were writing these checks as per Mr. Chadwick's instructions, sir, or as per his request, did there ever come a time when you yourself chose one of the payees of those checks, chose a political organization yourself?

A I chose what?

Q . . . Chose the recipient yourself.

Did you ever choose any of the recipients yourself?

A The payees?

Q Yes, sir.

A No, sir.

Q Now, was it your understanding that Mr. Chadwick was the individual who was making the decisions as to who these checks should be made out to?

MR. COHEN: I object to what his understanding was, your Honor.

THE COURT: Yes. Prefacing it with understanding is not proper.

MR. KATZBERG: I will rephrase it.

Q What, if anything, did you know about Mr. Chadwick's role with respect to selecting the payees of those checks?

MR. COHN: Again, your Honor, I'm going to object to that.

THE COURT: I will allow it, if he knows.

MR. COHN: There is no foundation on -- there is no foundation to the question, your Honor.

THE COURT: No, if he knows. I will allow it. Proceed.

A ...uld you repeat it back, please?

(Question read.)

MR. COHN: May we first find out whether he knows what his role was?

THE COURT: If he doesn't know he can tell us.

THE WITNESS: I don't know who told Mr. Chadwick to tell me who to make the checks paid to.

Q Was it your knowledge that he made the decision -- I want to find out whether or not this man knew whether or not Mr. Chadwick was the one making the decision.

THE COURT: Do you know that?

MR. COHN: Yes or no.

THE WITNESS: No, he wasn't making the decision, in my opinion.

MR. BANNIGAN: In his opinion. I move to strike. I don't think he's qualified to testify as to his opinion.

He is qualified only to testify as to what the facts are.

THE COURT: Do you know whether or not he was making the decision. That's the question.

THE WITNESS: I will answer by stating that I think he was making the decision as to who the

payees are, as far as my knowledge goes.

Q I notice among the exhibit we have identified here, Exhibit 76, there are two checks drawn to Mr. William Shea, one dated 4/11/72 --

A No, it's 419, 72 and 4/11/72.

Q How did you know to make those checks payable to Mr. Shea?

A I was told by Mr. Chadwick.

Q Did you ask him why you were drawing the checks to Mr. Shea, if you recall?

A I don't recall. I think I did question it but I don't recall very much about that.

I know he asked me and I wrote the checks out to him.

Q There is a third one to Mr. Shea, 8/17/72 for $100; is that correct?

A Yes.

Q And would your testimony be the same about that, about what, if anything, you asked Chadwick?

A Yes, that's about right.

Q I also notice another check in this exhibit, Exhibit 76.

It's dated -- read over my shoulder, 12/28/72 and it's made payable to Security National Bank; is that

correct, sir?

A Yes.

Q How did you know to make that check payable to the Security National Bank?

A I was told by by Mr. Chadwick.

Q Do you recall whether or not you asked Mr. Chadwick at around that time why you would be writing a check made payable to the bank?

A Yes, I asked him at that time.

Q And do you recall what he told you, sir?

A I don't recall.

Q You don't recall what was said?

A No, I don't recall.

MR. KATZBERG: May I have moment, your Honor?

THE COURT: Yes, certainly.

MR. KATZBERG: At this time I have nothing further of this witness.

(Continued on the next page.)

CROSS EXAMINATION

BY MR. RYAN:

Q My name is Joseph Ryan and I represent Frank Powell.

Do you recall in the initial conversation with Frank Powell that he indicated that they had him say -- that they had state and municipal accounts and it was necessary for the bank to attend him political fundings and dinners?

A Yes.

Q Did he indicated you should make your payments to Betty Jaeger in cash because this was questionable -- this practice?

A He didn't say it was questionable.

Q In fact he said it was legal and cleared with counsel?

A Yes. He said he had cleared it with counsel, the bank's counsel.

Q Was there anything unusual or contrary with the normal practice of the bank that would forward the checks or cash to Betty Jaeger in an interoffice envelope marked personal or confidential?

A No. We used those quite often, personal and confidential.

Q Did you do that to insure that the money got to Betty Jaeger?

A I did, sir.

Q Mr. Knoess, you at one time worked for the First National Bank & Trust Company of Amityville, Long Island; is that correct?

A That's correct.

Q And when was that?

A That was 1937.

Q Before the war?

A Before the war.

Q And you worked with Frank Powell in that bank?

A Yes, I did.

Q Do you remember when Frank Powell went to the war?

A I left before Frank and he followed closely thereafter.

Q Then there came the time when both of you were back on the Security National Bank working together?

A Yes.

Q I assume you have had an opportunity during those years to discuss Frank Powell's reputation for honesty, truthfulness and integrity?

A Would you repeat that?

Q Are you familiar with Frank Powell's reputation for honesty, integrity and trustworthiness?

A Yes.

Q Tell us what his reputation is?

A Mr. Powell's reputation over the years that I have known him has been one of the reputation that I would envy to have. It's been that good. He's well respected and as far as I'm concerned, he's one of the most loyal and honest individuals that I have ever met.

MR. RYAN: Thank you very much.

MR. BANNIGAN: May I inquire?

MR. COHN: I go now.

(Continued on the next page.)

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THE COURT: All right.

CROSS-EXAMINATION

BY MR. COHN:

Q My name is Irving Cohn and I am Dave Dowd's lawyer.

Mr. Katzberg showed you a greenish card and called it a VISI card, as I recall. Do you have that?

MR. KATZBERG: Yes.

Q I am curious about an entry that appears at the lower left-hand part of the card. Can I invite your attention to this, please (indicating).

(Pause.)

Q Do I take it -- first, let me ask you this, what were your duties at the bank say in the years between '67 and say '72?

A I was in charge of the automatic service which is the data center, customer service, and so forth.

Q Did it come to your attention at that time that a pension plan was set up by the bank for its employees?

A Yes.

Q Is there not a notation on your own card that you became eligible for that pension plan, I believe in November, November 7, 1967?

A Yes.

Q Tell me about this pension plan, was this something that was made available to a selected group of employees of the bank or all employees of the bank participated?

A I think that all employees were eligible for the pension plan after a certain number of years of service or age.

Q Is it fair to say, sir, that by November 7, 1967, whatever the criteria was, whatever the requirements were of this plan, you now became eligible for the plan, is that correct?

A Yes.

Q Now, this pension plan, was it based on -- was it tied up to any salary paid to an employee?

A It was based upon salary and length of service. Average salary, I should say.

Q Is it fair to say as an employee's average salary increases and length of service increases, the amount of pension he could look forward to increases?

A Yes.

Q Were there other employee benefits given by the bank to the employees about this time, '67-'72, referring specifically, if I can refresh your recollection, was there any medical or life insurance benefits made available to employees?

A Yes.

Q Were these plans also based upon the amount of salary that employees had received?

A Yes, there was a formula.

Q So that, again directing your attention to life insurance, as the amount of salary increased and the principal amount of the life insurance policy that your family would get, the benefits would also increase, is that correct?

A That is correct.

Q As a matter of fact, sir, on January 8, 1968, when you got these raises that you told us about, that was all figured in your gross salary?

A Yes.

Q Because the total figure that finally emerged on January 8, 1968 -- if you please bear with me -- goes to 23,700, am I correct, sir?

A Yes.

Q After that, you continued to get regular and repeated increases, is that correct?

A Yes.

Q All of this was reflected in your entitlement under your pension plan and under your life insurance, is that correct?

A Yes.

Q Every time you got a raise as far as you knew

you got a better break on your pension plan and life insurance, is that correct?

A Yes.

Q Did you ever attend any of the dinners that tickets were bought for which were sponsored by political groups?

A Very seldom.

Q On the occasions that you did go there, did you ever see any people that you recognized from other banks?

A These political dinners?

Q Yes.

A Yes.

MR. COHN: Thank you very much.

THE COURT: All right.

MR. BANNIGAN: May I inquire from here, your Honor? My inquiry will be short.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. BANNIGAN:

Q When you were asked by Mr. Powell to enter this contribution program, did you believe it was a proper program?

MR. KATZBERG: Objection to the word "proper."

Q Did you believe it was legal?

A In my conversations with Mr. Powell, I believed

it was perfectly legal in that respect.

Q Did you think it was a good program for the bank?

A I felt that any program where we could have good relationships with our depositors and service them and also receive their deposits would be an advantage to the bank and to them.

Q Indeed, sir, you have stated, have you not, you would have made contributions had you not received this substantial raise, is that correct?

A (No response.)

Q Do you recall having said that?

A Would you repeat that?

Q Isn't it a fact you have stated that you would have contributed even if Mr. Powell hadn't asked without having given you this substantial raise?

A (No response.)

Q Do you recall having said that?

A No, I don't to be honest. I don't think Mr. Powell would have asked.

Q I show you a document dated 11/7/74 and ask you to look at that document and see if it refreshes your recollection?

A I said here that I did.

MR. BANNIGAN: Thank you, no further questions.

THE COURT: Any other questions?

MR. KATZBERG: I have a couple on redirect.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q In reference to Mr. Powell, not only have you had a long professional relationship with Mr. Powell, isn't it a fact that you are a good friend of his, sir?

A Mr. Powell and I know each other, we would meet perhaps once or twice a year socially .

Q Do you consider yourself a friend of his?

A Would I?

Q Yes.

A Yes, I would.

Q Mr. Bannigan asked you about your willingness -- whether you would have made contributions if you did not receive the raise.

Would you have been able to make a $1,200 a year contribution without the raise?

A Financially you are referring to?

Q Yes.

A If I made the $1,200 contributions initially out of my own pocket it would have scraped me pretty tight. Working for Mr. Powell I have a great deal of loyalty to him.

Q You still would have?

A If he asked me to do it out of my own pocket, I would have tried to do it.

I wouldn't say I could do it very long without going into debt.

Q Did Mr. Powell ever ask you to make these contributions without being reimbursed or compensated?

MR. BANNIGAN: Objection, irrelevant.

THE COURT: I will allow that question.

Q Did Mr. Powell ever ask you to make these contributions without being reimbursed or compensated?

A No.

Q You indicated on cross-examination that based on what Mr. Powell told you you believed it to be legal, is that correct?

A Yes.

Q Would you have participated if you had reason to believe it was not?

A If it was not legal?

Q Yes, would you have participated?

A Not if I could have helped it, no.

MR. KATZBERG: Thank you, I have no further questions.

THE COURT: You may step down.

(Witness excused.)

MR. KATZBERG: The Government calls Mr. Brooks, B-r-o-o-k-s.

G E O R G E G . B R O O K S , a witness called on behalf of the United States of America, was sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Brooks, would you tell us by whom you are currently employed?

A Long Island Trust Company.

Q What is your title with the Long Island Trust Company?

A Vice president.

Q For approximately how long have you been employed by the Long Island Trust Company?

A Three months.

Q Prior to that time, by whom were you employed?

A Chemical Bank.

Q When did you start working for them?

A The acquisition of Security, January 1975.

Q Prior to your working for the Chemical Bank, by whom were you employed?

A Security National Bank?

Q When did you start to work for Security?

A September 1961.

Q Did you work at the Security National Bank continuously from 1961 through the time Chemical took over in January of '75?

A Yes, I did.

Q What was your title when you first began at the Security National Bank in 1961?

A I believe it was manager.

Q For how long a period of time did you serve as manager, sir?

A Two or three years.

Q Did you receive a promotion at that time?

A Yes.

Q To what title?

A Assistant vice president.

Q Thereafter, did there come a time when you received another promotion?

A Yes.

Q What was that?

A Vice president.

Q Approximately when was that?

A I don't recall the exact date.

Q I want to direct your attention to approximately April of 1968, do you recall what your title was then, sir?

A Could have been regional vice president.

Q Let me show you Exhibit No. 6 in evidence. I want you to look at it and see if that doesn't help you pin-point it?

A Regional vice president.

Q Thank you, sir.

Now, where were you located physically at that time?

A Riverhead.

Q Who was your immediate superior?

A There were various changes at various times, John McCabe, Peter Reilly, David Dowd.

Q At the time I am speaking of, April '68, do you recall who your immediate superior was at that time?

A I believe it was David Dowd.

Q Where was Mr. Dowd's office at that time?

A Huntington.

Q Again, now, I am referring to the period of time approximately April in 1968, did there come a time when you had a conversation with someone or someone spoke to you about political contributions?

A Yes.

Q Who had this conversation with you, sir?

A I received a phone call from Mr. David Dowd.

Q Could you tell the ladies and gentlemen of the jury what Mr. Dowd told you at that time?

A To the effect, congratulations George, you have been selected to the club.

Q Did he indicate who had selected you?

A No.

Q Prior to this time, did you have any knowledge about the club?

A No, I did not.

Q What if anything was said during the course of this conversation about the club?

A That certain senior people in the bank were making political contributions at the rate of $100 a month and this would be one of my functions going forward.

Q What if anything did you say when he told you about the contributions of $100 a month?

A Whether I said something or expressing my curiosity on how was I going to pay for this -- I pursued that.

Q Could you tell the ladies and gentlemen of the jury in substance what you said in that regard?

A I don't know if I questioned the giving of $100 a month because the conversation flowed that I would be

reimbursed for the contributions.

Q Did there come a time during the course of the conversation you questioned how you could afford it?

A Yes.

Q What if anything did Mr. Dowd say to you?

A The salary would be increased by $1,700 which would cover the $100 a month plus the $500 additional would cover taxes for the increase.

Q Was anything said about to whom the check should be made?

A Each check should go to Betty Jaeger.

Q Mr. Powell's secretary?

A Yes.

Q Was there any conversation about legality at this time?

A As I recall, I was told that: "George, you are aware it's illegal for a national bank to make political contributions but by individuals making the contributions it's perfectly legal."

Q Did Mr. Dowd tell you the basis of his legal opinion?

A No.

Q At this time, Mr. Brooks, did you agree to contribute?

A Yes.

Q Was it a matter of choice with you, sir?

A I felt I had no choice in the situation.

Q Do you recall anything else that was discussed during the course of this conversation that you haven't already related to the ladies and gentlemen of the jury?

A Nothing in particular, no.

Q Did there come a time when you did receive the $1,700 salary increase promised?

A Yes.

Q Approximately when did you get that?

A April '68.

Q What is the exact date?

A April 15, 1968.

Q I notice -- and we are referring to Exhibit 6 -- that you also received a $750 increase some three months earlier, is that correct?

A That is correct.

Q You also received four months subsequent another salary increase of $550?

A Yes.

Q Were those merit raises, sir?

A Yes.

Q Now, subsequent to the time you actually received

this $1,700 raise, did there come a time when you started to make the contributions?

A Yes.

Q Approximately when did you start to make these contributions?

A It would have been concurrent with the first payday in which I had the increase.

Q I would like to show you the contents of Exhibit 75 marked for identification and ask you to tell us whether or not looking at Exhibit 75 it gives you the first date of your first check?

A The first check is dated April 26, 1968.

Q Eleven days subsequent to the raise, is that correct?

A Yes.

Q I want you to look at the contents of that exhibit, Exhibit 75 for identification.

Look through it and tell us whether or not you recognize what the exhibit contains?

A Checks representing my contributions. My payments into the club.

Q Would you tell us as well whether or not you recognize Exhibit 75-A through E for identification?

A These again represent contributions.

MR. KATZBERG: At this time the Government would offer into evidence Exhibit 75, 75-A through E inclusive.

THE COURT: Any objection?

MR. NAFTALIS: Can we see them? We can look at them later, are there any void checks or --

MR. KATZBERG: You may look at them.

(Pause.)

MR. BANNIGAN: The bank has no objection. There are two checks never negotiated.

MR. KATZBERG: May they be so marked?

THE COURT: Mark them.

THE CLERK: Government's Exhibits 75 and 75-A through 75-E inclusive received in evidence.

(So marked in evidence.)

BY MR. KATZBERG:

Q Now, Mr. Brooks, I notice that the first check is drawn payable to Betty Jaeger, is that correct?

A Yes.

Q How did you know to draw the check payable to her?

A There were instructions on each payment.

Q Whose instructions were those?

A Mr. Dowd's.

Q For how long a period of time, looking through the exhibit, did you write the checks to Betty Jaeger?

A The last one to her is dated September 1, 1970.

Q Now, for the period of time April '68 through the last one of those checks in 1970, when you were writing the checks to Mrs. Jaeger, did you ever know where the money was going after you gave it to Mrs. Jaeger?

A I know it was deposited to an account.

Q Do you know where it went after that?

A No.

Q Did you ever ask?

A No.

Q Now, you indicated your last check payable to Mrs. Jaeger is November 1970?

A Yes.

Q Could you tell us how it came about you no longer made your checks payable to Mrs. Jaeger?

A I was instructed to cease sending them to Betty Jaeger and await further instructions.

Q Do you recall who told you that?

A I don't recall.

Q Did there come a time when you actually received, as you put it, further instructions?

A Yes.

Q Approximately when was that?

A The next check I have is dated November 25, 1970.

Q Who was it drawn payable to?

A William Shea.

Q How did you know to draw the check payable to William Shea?

A I received a phone call to make the check payable to this amount to Mr. Shea.

Q Who told you that?

A I don't recall.

Q Now, what about the check that follows that, sir, how was that drawn? Who was that drawn payable to?

A Also to William Shea.

Q Do you know who told you about that check, sir?

A I cannot say positively.

Q Do you know an individual by the name of Arthur Chadwick?

A Yes.

Q Did there come a time when you received a phone call from Mr. Chadwick with regard to the contributions?

A Yes.

Q Approximately when did that start?

A It was probably sometime early in 1971.

Q Prior to that time you have no recollection of

who it was who was telling you to write those checks?

A No one that I could say positively.

Q Thank you, sir.

Did you ever find out from anybody in the bank why you were drawing those two checks to Mr. Shea?

A The first -- all I heard was basically that Betty Jaeger was no longer collecting the money and we are going to set up a new system and I was told to send the two checks to Mr. Shea.

Q Were you told by anyone why there would be a change in the system?

A The best of my recollection, someone mentioned that the type of organization we had previously --

MR. RYAN: Could we have the identity of the person who said it?

Q Do you remember the name of the person?

A I don't recall who said it.

MR. KATZBERG: I will withdraw it, your Honor.

Q Now, looking at the checks you wrote from late '70, early '71 on, is it fair to say each of the checks were drawn by you as per Mr. Chadwick's instructions?

A That is correct.

Q Did you ever choose any of the payees yourself?

A I was given an option at times if I didn't want

to give to a democrat or republican organization, I can say I didn't want to.

Q Did you ever choose the actual recipient yourself?

A No.

Q Did you ever not go along with the amount that Mr. Chadwick requested?

A No, I just wanted to make sure that the check was not ahead of me, that was all.

Q By the way, did you ever hear anyone at the bank say, during the years you were making these checks out, that you were a member of the LOng Island Public Affairs Club?

A No.

Q Did anybody ever tell you that any of your money, any of the checks you wrote, was going to the Long Island Public Affairs Club?

A I chatted with you, you pointed it out a couple of weeks ago that an endorsement --

Q September 1, 1970, August 15, 1970, those checks specifically?

A Yes.

Q When I pointed it out to you, just a few weeks ago, that was the first time you were aware of that fact, sir?

A Yes.

MR. KATZBERG: Thank you. At this time I have nothing further of this witness, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. RYAN:

Q Would you take a look at Check No. 4107 dated January 30, 1971, would you take a look at that?

A Yes.

Q Who was that made out to?

A Bernard Ruggieri, treasurer.

Q Do you know Mr. Ruggieri was part of the Shea firm?

A No.

MR. RYAN: No further questions.

CROSS-EXAMINATION

BY MR. COHN:

Q Mr. Brooks, let me introduce myself, I am Irving Cohn and I am Dave Dowd's lawyer.

Mr. Brooks, you were working in the bank before Dave Dowd got to the bank, as I recall, is that correct?

A That is correct.

Q About 1967, when you were talking to Dave Dowd about this situation, where were you then employed physically?

A In the Riverhead office.

Q Mr. Dowd was in the Huntington Office?

A That is correct.

Q How long were you employed in the Riverhead office?

A (No response.)

Q Prior to this time, approximately, to the best of your recollection?

A Four years.

Q What did you do out in the Riverhead office, you were the manager?

A Managed the office at that time, I was regional supervisor of two other offices.

Q At the time, you were in charge of the Riverhead office and two other branches operated by the bank, is that correct?

A Yes.

Q At this time,-- withdrawn.

How long did you continue to work out in Riverhead?

A (No response.)

Q To the best of your knowledge.

A Approximately five years ago.

Q All told you were there about seven years?

A Yes.

Q During this period of seven years, did you at any time receive any requests from any political organization for tickets to journal ads, clambakes or dinners?

A Yes.

Q As a matter of fact, they would probably go to your branch people under you and they would funnel them to you and you would ship them into the main office?

A Yes.

Q Would you say this happens frequently, sir?

A Quite often.

Q Did you solicit these or did these policital groups simply send them in?

A They were not solicited.

Q Were there any times when -- withdrawn.

This was not any unique practice in the banking industry, was it, as far as you recall?

MR. KATZBERG: Objection.

Q Do you know whether this was a unique practice in the banking office that the Security National Bank was selected by the political groups to send --

A I don't think we were selected as an individual bank, no.

Q As a matter of fact, you had worked in other banks, had you not?

A Yes.

Q Before you came to Security and after you left Security?

A Yes.

Q And you know this practice of banks buying journal ads and tickets for dinners -- we already established what they served at the dinners and we won't ask you that -- you know it's not a unique practice -- withdrawn.

You were aware this practice did exist where the bank did buy the tickets or the journal ads and these dinners and testimonials and golf outings and clambakes and the like?

A Yes.

Q This practice was not limited solely to the Security National Bank, isn't that a fact?

A I was aware of other journal ads, yes.

Q Mr. Brooks, could you tell us, did you ever attend any of these dinners or outings?

A On occasion, yes.

Q On occasion. Would you go alone or with some member of the bank?

A There would be other bank members.

Q On these occasions, did you have occasion to see men or women who were recognized employees of competitor banks of the Security National Bank?

A That is correct.

Q Did they appear to be coming to these dinners in the same manner you did?

MR. KATZBERG: Objection.

Q You went to the dinner to circulate around and meet people?

A Yes.

Q Did you consider this to be good business for the bank?

A Yes.

MR. COHN: Excuse me a minute.

(Pause.)

MR. COHN: No further questions, thank you.

THE COURT: Any other questions?

MR. NAFTALIS: I have no questions.

MR. KATZBERG: Two questions on redirect.

REDIRECT EXAMINATION

BY MR. KATZBERG:

Q The BernardRuggieri check you were talking about with Mr. Ryan, dated January 30, 1971, could you read the full endorsement on it?

A Bernard Ruggieri, treasurer, for deposit only, Security National Bank, New York City Democratic Committee.

Q Now, you knew, did you not, with reference to

these political dinners that you attended that the purpose of the dinners was fund raising, is that correct?

A Yes.

MR. KATZBERG: Thank you, I have no further questions.

MR. NAFTALIS: Your Honor, might I ask a couple of questions? I said earlier I have no cross-examination but I do have two or three questions.

THE COURT: Go ahead.

(Continued next page.)

RECROSS-EXAMINATION

BY MR. NAFTALIS:

Q Good morning, Mr. Brooks.

I am Gary Naftalis, Mr. Clifford's lawyer.

I think Mr. Katzberg asked you a question about the purpose of the poltical dinners.

Wasn't it the bank's purpose for having people go to these dinners for publicity purposes?

A To give the bank exposure.

Q Visibility with business people?

A Yes.

Q Therefore, when you went there, you went with your business card?

A Yes, sir.

Q And you gave it out if it would be helpful to the bank?

A If appropriate, yes.

Q I take it the people from Franklin Bank and the others would do the same thing?

A To my knowledge.

Q You saw them circulating around and saying: Hello; identifying themselves as being part of the Franklin bank or National Bank of North America?

A Yes.

Q And they gave out their business cards?

A I presume so.

Q I think you indicated on your direct examination that you were told by Mr. Dowd that this had been approved by counsel?

A I didn't testify that it was approved by counsel.

Q I am sorry. I withdraw that.

Do you know who the counsel for the bank was -- Shea, Gould --

A Shea, Gould --

Q I think they changed their name a couple of times and Mr. Shea was the general counsel of the bank and general lawyer for the bank; is that correct?

A That's correct.

Q Did it come to your attention that you had to make a check to Mr. Shea at one time?

A Yes.

Q Mr. Chadwick told you that?

A I said I didn't recall who told me to issue the first check.

Q You recall Mr. Chadwick told you at one time that Mr. Shea, bank's counsel, was coordinating the activities of the political club?

A He may have told me this.

Q And Mr. Shea was acting as custodian of the club?

A That's correct.

Q Now, I think you were asked on your direct examination as to where these checks that you made out to -- where did they go -- is that correct?

I mean, who was the ultimate recipient?

A Those were the Betty Jaeger checks; that's correct.

Q I think you indicated you weren't exactly sure.

A That's correct.

Q But there is no question those checks went for the payment of journal ads and the payment of tickets for various political functions?

MR. PATTISON: Only of he knows.

THE COURT: Only if he knows.

MR. NAFTALIS: I am asking for his knowledge.

A I didn't see any of the checks drawn from the Jaeger account as to who the ultimate recipient was.

Q Were you told?

A I assumed this was for a political club.

Q So it was your impression that the clear

purpose of your checks was to pay for journal ads, political ads and clambakes and the like?

A Yes, sir.

Q And in response to Mr. Cohn's question, you went to some of these dinners?

A I went to some of them, yes.

MR. NAFTALIS: Thank you. I have no further questions.

THE COURT: We will take our cess at this time. Step out.

(Jury excused.)

MR. PATTISON: If we may at this moment, in accordance with our view when we were to turn into the Court -- submit a memo relative to the Casey meeting, we'd like at this time to turn over a memo in the form of a letter to the Court, with copies to counsel, relative to the Casey telephone call.

THE COURT: All right.

MR. KATZBERG: With respect to the question of venue in Count 16, we will, as soon as possible, respond to it and if tardy in our response, I want to apologize to the Court now for it.

MR. RYAN: I want to place on the record

one.

A 659

Now we are ready to start.

MR. KATZBERG: Your Honor, the Government calls Thomas Casey.

T H O M A S J . C A S E Y , a witness called on behalf of the United States of America was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. KATZBERG:

Q Mr. Casey, in a loud voice so that everyone can hear you, will you please tell us your present occupation?

A Attorney and partner in the firm of Casey, Milgram and Willard.

Q How many years have you been associated with that firm?

A July 1974.

Q Prior to that time, by whom were you employed?

A Immediately prior to that I was employed by the Nassau Trust Company as a senior vice president from March 1973 until July 1974.

Q During that time, were you employed as a banker or lawyer?

A Banker.

Q Prior to your employment for the Nassau Trust Company, by whom were you employed?

A Security National Bank as a vice president from January 1970 until March 1973 when I left to join Nassau Trust Company.

Q What was your title at the Security National Bank?

A Vice president.

Q In what area did you work generally?

A I was in charge of business development.

Q When you started at the Security National Bank, who did you report to?

A I reported to Joseph Dutra and David Dowd.

Q Did there come a time after you joined the bank in early 1970 that you learned there was a system in existence whereby political contributions were being made?

A Yes.

Q When for the first time did you learn of this system, sir?

A Shortly after I joined the bank Joseph Dutra the vice president in charge of marketing, and had an adjoining office with me in the main office annex in Huntington, told me the bank had a system.

Q Where physically did the conversation take place?

A In his office.

Q Anybody else present?

A Not to my recollection.

Q Could you tell us to the best of your recollection what was said in that conversation?

A Yes, Mr. Dutra explained to me that the bank made contributions to various candidates, committes, and organizations, and these contributions were disbursed from a special account, the account being maintained under the name of Betty Jaeger, the secretary to Mr. Frank Powell. And the funds were placed in that account from various individuals in the bank who made the contributions to the account.

Q Now, did Mr. Dutra say anything else about the manner in which the contributions were made?

A Yes, he told me that the contributions were a result of the individuals having been given salary increases and then making these monthly contributions. Although not all the participants had been given salary increases.

Q Did Mr. Dutra say how many people were contributing?

A About 25 or 26.

Q How much of that number were not being compensated?

MR. RYAN: If he said.

A . He indicated Mr. Clifford and himself, Mr. Dutra, were not compensated.

Q Anybody else?

A Not that I can recall.

Q Was there any discussion about how much money these officers were contributing?

A Yes, $100 per month.

Q Anything sa'd about --

MR. BANNIGAN: I object and ask he not leave the witness. He can ask if anything else was said but not specifically --

THE COURT: Yes.

Q Tell us if you remember anything else about that conversation?

A I don't recall anything else.

Q And did there come a time when you learned who was making the decisions as to where the money would go?

MR. NAFTALIS: I object to the leading. When was the next time he had a conversation, not to suggest the substance of the conversation.

THE COURT: When was the next conversation? If you can recall.

THE WITNESS: The next conversation took place immediately thereafter. We had a whole series of conversations since we had adjoining offices and this was a frequent matter of discussion.

Either in that conversation or immediately thereafter, he told me that Messrs. Clifford, Powell and Dowd had determined who would be the contributors to the Betty Jaeger fund.

Q Did he say anything else about the role those individuals played, if any?

A He told me Joseph Dutra had approved certain requests and then would refer other requests to these gentlemen for approval.

Q Did he say anything else about that?

A Well, he indicated he was in the nature of a conduit, he would receive the request and refer them up and receive approval and refer that out. And that Betty Jaeger was told to disburse the funds.

Q Now, Mr. Casey, did there come a time when you learned of the existence of the Long Island Public Affairs Club?

A Yes.

Q When for the first time did you learn about the Long Island Public Affairs club?

A In the spring of 1970, Mr. Dutra discussed that with me.

Q Where did this conversation take place?

A Again in our offices in Huntington.

Q Anybody else present to your recollection?

A Not to my recollection.

Q Tell the ladies and gentlemen of the jury to the best of your recollection what Mr. Dutra said.

A Mr. Dutra told me that the existing system of making political contributions was not deemed well appearing because it was a commingled fund and it was from a special account and so it was determined that a cosmetic change was needed, that a public affairs club had to be created which would then make the contribution.

Q Was anything said about whose decision this was?

A He told me this was the decision of the same gentlemen, Messrs. Clifford, Powell and Dowd. And he had discussed that with them.

Q Was anything said about the role you were to play?

A Yes, he asked me to be an officer of that club.

Q What was the title, do you recall?

A Title as an officer?

Q Yes.

A Vice president of the club.

Q Did you agree to be the vice president?

A Yes, I did.

Q To your knowledge, thereafter, did you play any role whatsoever as the vice president of the Long Island Public Affairs Club?

A Not to my recollection. I know the club was formed and I am not sure really how it functioned but I don't remember playing any role as vice president.

Q Do you know how long the Long Island Public Affairs Club was in existence?

A From that time when it was formed until a new system of political contributions was established in the fall of 1970, a period of about six months.

Q Now, during this period of time, early 1970, when you told us you were first told about the contributions and reimbursement, were you contributing at that time?

A No.

Q Did there come a time when you actually began to contribute yourself?

A Yes.

Q Tell us how that came about?

A In the late fall of 1970, Mr. Dutra told me that he had discussed with Mr. Dowd, including me as a member of the contribution system, it was necessary to expand the group because the demands on the resources of the bank and the contribution system were beyond what was

available, so the membership was going to be expanded and I was approved as one of the new members.

Q After that conversation with Mr. Dutra, what if anything occurred with respect to your membership?

A I was advised that I was going to start contributing in January 1971 after I received my increase, my next salary increase, which was reviewed and approved in December of 1970.

Q When for the first time did you learn you were going to be making these contributions?

A I was on vacation around Christmas of 1970 and I received a phone call at home from David Dowd informing me that I had been approved for a salary increase of $5,000, $3,000 of which was merit, and in his words $2,000 of it was for the club.

Q Did there come a time when you learned who had actually selected you for the club, sir?

MR. NAFTALIS: Objection. Again he is suggesting -- ask what the next conversation was.

THE COURT: No.

A Mr. Dutra told me that Mr. Dowd had discussed that with Mr. Clifford, Mr. Powell, and himself, and my participation had been approved.

MR. KATZBERG: I ask the defense counsel stop

making faces during the testimony.

THE COURT: I thought I said none of that should take place in the Courtroom under any circumstances. No lawyer is to make faces or grimaces of disbelief in the testimony either way. The belief of the testimony is the function of the jury and I suggest to you that you are the only ones who can determine the credibility of witnesses.

Anything else that takes place in the Courtroom is beneath the dignity of the person doing it.

MR. KATZBERG: May I proceed?

THE COURT: Yes.

(Continued next page.)

Q Did there come a time when you actually received that $5,000 in combined increases?

A That was a salary increase and I began to receive it January 1971.

Q I want to show you what has been previously marked as Exhibit 8 for identification and I want you to see whether or not you can find that increase on that exhibit?

A Yes, I find it here (indicating).

Q What is the date of the increase?

A The date of the increase -- it doesn't say increase -- January 4, 1971.

Q How much did you receive on that day?

A $5,000.

Q Is your name on top?

A Yes.

Q There are other notations on this record, isn't that correct?

A Yes.

Q Are all of those entries on that exhibit a fair and accurate depiction of your salary at the bank during your tenure there?

A No.

Q What is not accurate?

A One inked in -- on 1/3/72, indicating that I

got a further increase of -- it shows $38,000 as base pay. I have no recollection of that ever being approved or receiving it.

Q Other than that increase, are the other indications and notations contained on the document a fair and accurate depiction of what I asked you before?

A Insofar as I can attest to, yes. The personnel number [illegible] no knowledge of. The phone number, marital status, et cetera, is accurate.

MR. KATZBERG: The Government would offer Exhibit 8 in evidence.

MR. BANNIGAN: Can we see it, your Honor?

THE COURT: Yes.

(Pause.)

MR. BANNIGAN: No objection.

THE COURT: Mark it.

THE CLERK: Government's Exhibit No. 8 received in evidence.

(So marked.)

MR. NAFTALIS: No objection for Mr. Clifford.

MR. RYAN: May I ask a question on voir dire?

VOIR DIRE EXAMINATION

BY MR. RYAN:

Q Do you say you got 38 as the last salary?

A No.

Q $35,000?

A To the best of my recollection.

Q Look at the card. Doesn't it say 35,000?

A It says 35,000 as far as a typed in entry. There is an inked notation below that which gives the appearance of a further salary increase. I have no knowledge of that.

Q Doesn't it say 35,000 in the handwriting?

A I interpret that to be an eight.

Q Take a good look at it.

A Yes.

Q Isn't that an eight? Take a magnifying glass and look at it.

A The difficulty lies in the five. The five has a circle on top of it. It is apparently a five.

MR. KATZBERG: At this time the Government would offer Exhibit 8.

THE CLERK: So marked in evidence.

DIRECT EXAMINATION

BY MR. KATZBERG: (continuing)

Q Mr. Casey, did there ever come a time when you

spoke to Mr. Clifford about this $5,000 raise?

A Yes. In January 1971 after I returned from vacation I was in his office in Huntington on general business and I mentioned to him I received my salary increase and I thanked him for it.

And he said, "Gee, I don't even remember how much it was."

I said I received $5,000 but $2,000 of that was for the club.

He said, "Keep up the good work."

Q Having received this increase, did there come a time thereafter when you began to make these contributions?

A Yes, for a period during 1971 I made political contributions as part of this general system.

Q I want to show you the contents of Exhibit 81 for identification. I want you to look at these items and tell the jury whether or not you recognize them?

A Yes.

Q What do you recognize that to be?

A These are checks which I signed drawn on my account at Security National payable to various Democratic political candidates and committees.

Q Were those checks drawn by you pursuant to this political contribution organization?

A Yes.

Q Now, I notice that the first check on top, 1/18/71, is for --

A Sorenson, that is Ted Sorenson.

Q Democrat?

A Democratic candidate for the United States Senate or for the Senate nomination.

Q Is it fair to say all the checks are drawn to Democrats?

A Yes.

Q How did it come about you wrote all your checks to Democrats?

A Well, I have always been a registered Democrat. I am an elected Democratic official. I am a councilman in the town of Huntington. I was originally elected in '67, reelected '71 and '75. And when I agreed to make these contributions I raised that question about making contributions [illegible]ly to various candidates and I indicated I would like to make contributions only to Democratic candidates and Mr. Dutra and Mr. Dowd agreed that that would be possible.

MR. KATZBERG: Thank you, sir.

At this time, the Government offers into evidence Exhibit 81.

MR. RYAN: While my brother attorneys are

looking at the checks, if I may, your Honor.

VOIR DIRE EXAMINATION

BY MR. RYAN:

Q Are these all the checks you issued while at the Security National Bank in connection with this program?

A The United States Attorney asked me to produce all the checks that I had written and I looked and those are all I can find.

Q These are all cancelled checks I take it you keep in an envelope?

A Yes.

Q And you went through all your envelopes of all your cancelled checks and this is what you've come up with?

A Yes.

(Pause.)

MR. BANNIGAN: No objection.

MR. NAFTALIS: No objection.

MR. COHN: No objection.

THE COURT: Mark them.

THE CLERK: Government's Exhibit 81 received in evidence.

(So marked.)

DIRECT EXAMINATION

BY MR. KATZBERG: (continuing)

Q Mr. Casey, I want to direct your attention to the summer of 1970.

After you first learned about the club and the contributions, but before you started to contribute yourself, did there come a time in the summer of 1970 when you learned that there would be a change in the contribution method?

A Yes. In about July 1970, I learned that the system was going to be changed to an individual contribution system rather than placed in a commingled fund.

Q Who told you about that?

A Initially, Joseph Dutra.

Q Again, where did this conversation take place?

A In our offices in Huntington.

Q Tell the ladies and gentlemen of the jury as best as you can recall what Mr. Dutra told you at that time?

A He told me although the change had been made to the Long Island Public Affairs Club it was still a commingled fund and had the disabilities attendant to that, and the checks had to be forwarded to one location and deposited in that account and dispersed in that account and that it would be much better appearing to have the individuals make individual contributions.

Q Tell us what else, if anything, you recall Mr. Dutra saying during the course of that conversation.

A He told me that the number was going to have to be expanded. At that time there were about 25 or 26 people participating and he told me that, as I recall, Frank Powell had reviewed the Betty Jaeger fund and found that the demand on that was overwhelming and additional approximate 20 people would have to be added to the club each contributing $100 a month so that it would generate additional funds.

Q Did Mr. Dutra say anything at that time about any roles you would play with respect to this new system?

A Well, not right at that time but shortly thereafter he asked me to contact the individuals who were making contributions and tell them how their checks were to be made out.

Q Who had selected you for this role, if you know?

A He told me that had been discussed with Mr. Dowd and had been approved.

Q What role was this to be, sir? What was your function supposed to be?

A Essentially, if I were to use one word, as a contact. That is I was to tell the individuals who were making the contributions how they were to make out the check

and where they were to be sent.

Q How were you to know this information, what to tell the officers?

A Well, smaller contributions, these could have been approved by Mr. Dutra or myself. On the larger contributions, would everybody refer to Messrs. Clifford, Powell and Dowd for their approval.

Then they would relate the approval and this would be told to the individual making the contributions.

Q When you say a smaller contribution, can you tell us approximately how much money you are talking about?

MR. BANNIGAN: I wonder if we can ask who related the information to Mr. Casey?

THE COURT: Yes.

Q About the role you would play?

A Who gave me that information on my role?

Q Yes.

A Mr. Dutra. And I was discussing that --

MR. RYAN: Mr. Dutra was telling you these things?

THE WITNESS: Yes.

THE COURT: I don't think you have a right to interrupt.

MR. RYAN: It's a very important point.

THE COURT: It happens too frequently. The fact that I don't mention it more often is not an invitation for you to do it. It's not right for Government counsel or other counsel to do it when his adversary is examining.

Q Did Mr. Dutra give you anything at that time?

A He gave me a list of the individuals who were participating in the contribution system.

Q Approximately how many names were on that list, if you can recall?

A To the best of my recollection, somewhere around 25, 26, 27.

Q Now, did there come a time when you actually began to perform the contact officer's role as you put it?

A In the late summer, early fall of 1970, I did perform that role.

Q For approximately how long a period of time did you [illegible], sir?

A It was approximately a month.

Q Now, during this period of time, did you call a number of offices in that regard?

A Yes, and this is part of the reason Idid it for such a short period, I started to call the offices and tell them how their checks were to be made out even with a

relatively small number such as 25 it became burdensome in terms of reaching them. They weren't at their desks, they weren't in the bank, and I complained to Mr. Dutra that this was taking up too much of my time and my time could be better spent on other bank business.

Q Referring to this period of time when you were playing this contact officer role, how would you know what information to convey to the club members as to who to draw their checks to?

A If it were a contribution of $500 to whomever, I would tell five individuals to draw their checks for $100 each or if an individual had no contributions the prior month he would draw a check for $200 to raise $500 which would be forwarded to the recipient.

Q How would you know which candidate would receive the money?

A This was approved -- for the larger amounts it was referred to Mr. Clifford, Powell --

MR. RYAN: I object to that general testimony. We would like to have the specific instances of who told him to do what.

MR. KATZBERG: I think we are allowed to elicit the practice during that period of time.

MR. NAFTALIS: If it was a one month period of

time that there were conversations he could recollect them. I think what Mr. Ryan wants is not to have confusion between different periods of time.

THE COURT: Are you talking about this one month period of time?

THE WITNESS: The system was essentially the same later as I was functioning during the --

THE COURT: You have personal knowledge on your part when you say later --

THE WITNESS: Yes.

Q You told us before you had some authority on your own to approve smaller contributions, is that correct?

A Yes.

Q Could you define for us what a smaller contribution was?

A Something under $500. I can't recall, I could be corrected, approving a contribution of that amount. I am thinking in terms of $100 or $200.

Q Did anybody else have that authority to approve smaller contributions?

A Mr. Dutra had it and he was functioning in that role before I was and he had similar authority.

Q Do you know an individual by the name of Martin Travers?

A Yes.

Q Did he work for the bank?

A Yes.

Q What was his position?

A President and chief administrative officer.

Q To your knowledge, did Mr. Travers play any role with respect to these contributions whatsoever?

MR. NAFTALIS: Objection to that as irrelevant. Mr. Travers is not a defendant in this case nor is he a co-conspirator. Whatever role he did or didn't play is irrelevant.

THE COURT: No. It goes to the entire situation and I will allow him to answer.

Q What is the answer to that?

A Mr. Travers refused to participate in the system.

Q He played no role, is that correct?

A No role.

Q Now, during this period of time, summer - fall, 1970, until late 1970, did you become familiar with the manner in which the contribution system worked?

A Yes.

Q Would you tell the ladies and gentlemen of the jury how decisions were made and the basic way the contribution

system operated in this time, late 1970, to your knowledge?

MR. NAFTALIS: We object to that. He should be asked as to whether or not he had a conversation with someone. We have no objection to bringing it out, but to ask for his opinion --

(Continued on next page)

fols.

THE COURT: He is not asking for conversations, he is asking for his personal knowledge, did he know. That is a proper question. I do not see anything wrong with that question. You cannot have operation without conversation.

MR. NAFTALIS: We would object unless there is a foundation laid.

THE COURT: You can object to a question. You cannot suggest the question to be asked. That is not proper. You can object to a question, if the Court finds the objection is proper it will sustain it.

You may ask the question, Mr. Katzberg.

MR. KATZBERG: May the question be read back?

(Question read.)

THE WITNESS: The way the system operated, a request for a contribution would originate through some individual. It might be through a branch manager, district officer or somebody in senior management. In the branches they would funnel the request up through Mr. Dutra or myself. If it were a large amount, it would be referred to one of the members of senior management for approval, or if one of the members of senior management, Mr. Clifford, if he met somebody at a function and was asked for a contribution, and he

agreed to make it, he would tell us and the funds had to be raised.

Q To your knowledge, who was selecting the members of the club at this time?

A The members of the club, since it involved a salary increase as well, had to be approved by --

MR. RYAN: Excuse me, I am sorry.

THE COURT: Yes, that is volunteering.

Strike out the answer.

You were merely asked who the members were and not the method.

MR. RYAN: Yes.

THE COURT: Sustained.

THE WITNESS: You asked me who --

THE COURT: Read the question, please.

(Question read.)

A (Continuing.) May I ask, are you referring to 1970 before the club was expanded and went to the individual members?

Q Yes, late 1970, summer or fall of 1970?

A When it was expanded?

Q Yes.

A The participants were approved by senior management, by Messrs. Clifford, Powell and Dowd.

Q During this approximately four month period of time that you were serving as a contact officer, did any of the officers that you called up refuse to contribute to the individual you told them to?

A Not to my recollection.

Q Did I cut you off?

A No.

Q You indicated that you ceased playing this role after about a month; is that correct?

A Yes.

Q What happened then, sir?

A Well, as I indicated earlier, I complained to Mr. Dutra that this was burdensome in terms of the time involved, and I said I felt it was a purely ministerial role, no discretion was involved, that it was a question of locating the various officers and asking them to make out a check. I suggested that somebody else be used for that function.

Q Then what happened?

A Well, Arthur Chadwick, who worked in the business development department, who was physically located in Amityville, was transferred up to Huntington and given that responsibility for contacting the individuals involved.

Q Do you know who selected Mr. Chadwick for this role, sir?

A Well, Mr. Dutra told me that was approved by Mr. Dowd.

Q What was Mr. Chadwick's title, if you recall, at this time?

A To the best of my recollection it was either administrative assistant or assistant manager.'

Q Was that the title of an officer?

A Assistant manager is an official title. It is the lowest official title. Administrative assistant is a non-official title.

Q Was there any conversation that you had with anyone about the fact that Mr. Chadwick was a junior officer?

A Yes, I discussed that with Mr. Dutra and he said that Mr. Chadwick had to make it clear to those that he was calling that this was not his decision, that he was implementing the bank's policy and telling them how their checks were to be made out, and the individuals called were not to dispute that decision.

Q Now, to your knowledge, did Mr. Clifford know Mr. Chadwick prior to this time?

A Yes, they worked together at the Franklin National Bank.

Q Now, Mr. Casey, during the period of time that you were bank officer, did you maintain any records of these

contributions?

A Yes.

Q Could you tell the ladies and gentlemen of the jury the general nature of the records that you kept and maintained?

A Well, to the best of my recollection Mr. Dutra gave me a listing of the participants and either with that or later appeared on a piece of graph paper so the contributions could be recorded and this was given to Mr. Chadwick when he assumed the function.

Q Now, you told us that you had numerous conversations with Mr. Dutra about the club during the year 1970; is that correct?

A Yes.

Q Did you have a number of conversations with Mr. Dowd at this time as well?

A Yes.

Q And did any of those conversations,,either with Mr. Dutra or with Mr. Dowd, touch upon any legal problems at the club?

A Yes.

MR. BANNIGAN: Objection, as leading.

THE COURT: Yes, it is leading.

Q Can you tell us if there were any such

conversations?

MR. BANNIGAN: I thought the objection was sustained.

THE COURT: It was sustained.

Rephrase it.

MR. KATZBERG: Thank you.

Q I want to direct your attention to approximately the spring of 1970;

Did there come a time when you had a conversation with Mr. Dutra or Mr. Dowd about the club?

MR. BANNIGAN: Objection as leading.

THE COURT: I will allow the question.

MR. RYAN: My recollection is that this conversation was covered. This was in the spring of 1970.

MR. KATZBERG: How does Mr. Ryan know what the witness is going to say?

THE WITNESS: I already alluded to the conversation with Mr. Dutra regarding the change from the Betty Jaeger account to the LOng Island Public Affairs.

THE COURT: That is what he told us.

MR. RYAN: Yes.

THE WITNESS: That was --

MR. BANNIGAN: I object as asked and answered.

THE COURT: It has been answered. He said the spring of that year.

Q Any other conversations around that time?

A Yes, I had numerous conversations during this whole period of time with Messrs. Dutra and Dowd. We worked very close together. Mr. Dutra was the vice president in charge of marketing, and I was the vice president in charge of business development, and we both reported to Mr. Dowd and this was a problem that we discussed on numerous occasions.

Q When was the first time you had any conversation about any problems with the club?

MR. COHN: He never told us that he had any problems.

THE COURT: Yes, bad question.

MR. KATZBERG: I am sorry, I withdraw it.

Q Did you ever have any conversations with Mr. Dutra or Mr. Dowd about any problems with the club?

MR. BANNIGAN: Objection.

THE COURT: That word "problems" is an all encompassing question. There could have been loads of problems. It is not a good question.

If you have a specific question in mind, ask it.

Q Did there come a time when there were any difficulties with the club, sir?

MR. COHN: It is the same question.

MR. KATZBERG: I have to pinpoint it. There were so many conversations.

MR. COHN: Why don't you ask him what the conversations were.

THE COURT: Will you tell us the conversations that you had, elucidating whether there was any discussion about the club or anything about the club during that time?

THE WITNESS: As I indicated earlier, we had this whole series of conversations, and as a result of these there was the change from the Betty Jaeger to the Long Island Public Affairs to the individual contribution system, and the reason for all these changes, and the subject of the conversation was "How can the bank make contributions in a cosmetic manner", because we all knew that bank contributions were prohibited by law. The Corrupt Practices Act prohibited that, and the question was how could the contributions be made so that they would appear to be made on behalf of individuals.

Q Now, I want to refer your attention to the

summer of 1970:

Did there come a time when you and Mr. Dowd had a conversation in the summer of 1970?

A Yes.

Q Where did the conversation take place?

A It took place in his car on the way to a meeting.

Q Was anybody else present in his car at that time?

A Not to my recollection.

Q Could you tell us what was said at that time?

A Yes, we --

MR. COHN: May we have a date fixed?

THE COURT: Yes.

Q During the specific time in the summer of 1970, do you recall?

A I believe it was in September, because I believe I was on vacation in August, and we had frequent morning meetings with the various districts or branches. The meetings would take place 8:00 a.m. and he and I would meet and drive to those meetings together, and it was during the course of one of those drives that we discussed the individual contribution system and the changeover to that.

Q Could you tell us what that conversation was?

A To the best of my recollection we talked about the need again to make a further change to the individual contribution system, because the commingled fund was not a good appearing vehicle for contributions, and it did require the maintenance of a separate account in both cases and this was not good.

Q Any other conversations that you remember in the car?

A Not at that time.

Q Do you recall discussing reimbursement?

MR. COHN: Your Honor, I object. He asked me was there any further conversation and he said there was not any.

THE COURT: He said not at that time.

Did you have subsequent conversations?

THE WITNESS: Yes.

We did discuss the subject of reimbursement and we both recognized the fact that without reimbursement the vast majority --

MR. COHN: I object. May we have the conversation only.

THE COURT: With whom was the conversation?

THE WITNESS: Mr. Dowd.

MR. COHN: If your Honor pleases, may I

respectfully request that you caution the witness to merely state what he said and not what he recognized or what he assumed somebody said?

THE COURT: Are you telling us your personal knowledge, rather than what you are speculating or guessing?

THE WITNESS: Yes, your Honor.

There was a conversation between Mr. Dowd and myself --

Q Would you tell us that conversation?

A Yes, we discussed reimbursing the bank officers or really paying them in advance so that they could make the political contributions, and it was obvious that except in rare cases such as Mr. Clifford --

MR. RYAN: Objection as to what is obvious.

MR. KATZBERG: Just tell us what was said.

THE WITNESS: I am sorry.

We discussed the need --

MR. COHN: Can we have him identify who said what?

THE COURT: You need not discuss it in the manner of exactly what was said, but rather the substance, indicating who said what.

THE WITNESS: All I can do is allude to the

conversation. It took place five and a half years ago.

THE COURT: Do you recall what you said and what Mr. Dowd said?

MR. KATZBERG: In substance.

MR. BANNIGAN: That's what I would like to know, whether he remembers who said what?

THE COURT: That is what I asked him. I thought that was made pretty clear.

MR. BANNIGAN: Who said what?

THE COURT: No, just if you recall the substance of the conversation and whether or not you were saying it or Mr. Dowd was saying it. That is all to the best of your ability.

THE WITNESS: Your Honor, it is hard to do that because this is dialogue --

THE COURT: I do not need the explanation. We will understand that. You must still try to conform and I am sure as counsel you know that. We must have it this way. If you cannot, we will take the substance of it.

THE WITNESS: I think it would be more accurate to give just the substance.

THE COURT: Then you may give the substance.

THE WITNESS: The substance of the conversation was a need to reimburse bank officers in order to make contributions. I said "Reimburse," but in effect we were talking about giving them increases in advance so that they could make the contribution, because most bank officers were not highly paid that they could afford to make these contributions without being reimbursed, and they were not so concerned about politics that they were going to be making those contributions. Therefore, it was a necessity, no contribution -- no reimbursement, no contribution from the bank.

(Continued next page.)

b2/2 1

Q Anything else discussed that time with respect to reimbursement that you can recall?

A Not to my recollection.

Q Now, did you know at that time that it was illegal to reimburse or compensate officers for making contributions?

A Yes, Mr. Katzberg, as I indicated earlier when I spoke of Mr. Dowd, Mr. Dutra and myself, knowing that the Correct Practices Act --

MR. COHN: Your Honor, he was asked did he know. Can't he answer a question?

THE COURT: Yes.

THE WITNESS: Yes.

Q To your knowledge, did Mr. Dowd?

A Yes.

MR. NAFTALIS: I am sorry, I missed it. Could the question and answer be read back, the one before?

(Testimony read.)

MR. COHEN: Your Honor, I object --

THE COURT: As far as yes.

Q Did there come a time approximately in the late summer or early fall of 1970 when you had a conversation with Mr. Dowd about legal counsel and their opinion?

A Yes.

Q Where did that conversation take place?

A Mr. Dowd's office.

Q And was anybody else present?

A Not to my recollection.

Q Would you tell us what that conversation was?

A We were about to change over from the Long Island Public Affairs Club to the individual contributions system and we were discussing that. Mr. Dowd told me he discussed it with counsel, Shea, Gould, and specifically Mr. De Jenaro, of that firm and that we were going to go ahead with the individual contribution system.

Q Did Mr. Dowd --

MR. COHN: I did not get the last part.

THE COURT. "We were going to go ahead with the individual contribution system."

MR. COHN: Thank you.

Q Did Mr. Dowd tell you what he told Mr. De Jenaro about the contributions?

A No.

Q Mr. Dowd tell you whether or not he discussed --

MR. NAFTALIS: Objection. All he can ask him is what was said.

THE COURT: Yes.

Q Now, did you ever speak to Mr. Clifford about

any legal aspects of the club?

A No

MR. KATZBERG: Thank you, sir.

Q Did you ever have such a conversation with Mr. Powell?

A As I recall in 1970, yes, it was in Mr. Powell's --

THE COURT: The answer is,"yes."

Q Where did the conversation take place?

A In Mr. Powell's office.

Q Was anybody else present?

A Not to my recollection.

Q Would you tell the ladies and gentlemen of the jury what if anything was said?

MR. RYAN: When in the year 1971?

THE WITNESS: In the fall.

MR. RYAN: May we have the month?

MR. KATZBERG: If you remember.

THE WITNESS: I do not remember the exact month.

MR. RYAN: Just the fall.

MR. KATZBERG: May I proceed, your Honor?

THE COURT: Yes.

Q Could you tell the ladies and gentlemen of the jury what was said at this meeting?

A I had occasion to go to Mr. Powell for approval

on a specific contribution. I think I couldn't reach Mr. Dowd at the time and I asked Mr. Powell for his approval on this particular contribution. That is why I went to his office.

Q What was the conversation?

A He approved the conversation and he cautioned me that we had to be very careful about the contribution system, because if this became a matter of public knowledge, it would certainly be very, very awkward, to say the least, and all of us that were participating would be in trouble.

Q Now, you tell us earlier in your testimony that there came a time in approximately June -- May or June when you decided to expand the club --

A Yes.

Q (Continuing) -- of 1970. Were you part of this expanded club when introduced in late 1970, to your knowledge

A Yes.

Q As of the year 1971, when you began to make these contributions, could you tell us what if any role you played with respect to the contributions, beyond writing the checks?

A I received requests for contributions and if they were of relatively --

MR. BANNIGAN: Objection, asked and answered.

MR. KATZBERG: If you recall, my questions were as to what took place in 1970. I am now going into 1971.

THE COURT: What were those, if you can recall?

Q Can you answer that?

A I would receive requests for contributions. If they were relatively modest amounts, I might approve them or Mr. Dutra might approve them. If they were larger amounts, they had to be referred to one of the members of Senior Management, Messrs. Clifford, Powell or Dowd.

Q What was Mr. Dutra's role in the club in 1971? You told us what it was in 1970.

A Mr. Dutra left the bank in March of 1971 and so for the period he was there -- and he was actually gone a month before he terminated his employment -- he played the same role for the brief period that he was there.

Q What was Mr. Powell's role in the club in 1971, if you recall?

MR. RYAN: If he knows.

Q If you know, I am sorry.

A Insofar as I had contact with him, it was as a contributor to the over-all political contributions. He also approved certain requests when referred to him -- approved or disapproved. He also, as a member of the Board

of Directors referred to the Board the requests for salary increases for those who were admitted to the club.

Q To your knowledge, did Mr. Powell continue to play those roles in 1972?

A Yes, but on a reduced basis. He retired in 1972, although he remained a consultant and retained an office in the bank.

Q Now, could you tell us what Mr. Dowd's role was in 1971?

A Mr. Dowd's role was essentially --

MR. COHN: I object to the question, your Honor, to the form of the question.

THE COURT: If he knows, I will allow it.

A As I had contact with him in 1971, he would approve certain of the larger requests for contributions that were referred to him, and generally oversaw the functioning of the contributions system.

Q Did Mr. Dowd play any role, to your knowledge --

MR. COHN: I will object to the question as leading.

THE WITNESS: One other thing --

MR. COHN: Just a moment, there is no question before the witness.

MR. KATZBERG: That is not a leading question.

THE COURT: Have you completed your answer?

THE WITNESS: I should have added that he was an individual contributor.

MR. KATZBERG: May I?

THE COURT: Yes.

We will take a recess at this point. You may step down.

(Recess taken.)

(Continued on next page.)

(The following occurred out of the hearing of the Jury.

MR. KATZBERG: May we discuss the matter of Mr. Casey's testimony out of the hearing of the Jury?

THE COURT: I have no objection.

THOMAS CASEY, called as a witness, having been previously sworn by the Clerk of the Court, testified further as follows:

THE COURT: All right, this is an offer of proof of testimony.

MR. KATZBERG: May the record reflect this is out of the presence of the Jury.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. KATZBERG (Cont'd):

Q You told us you began to work at the Nassau Trust Company.

A Yes, in March of 1973.

Q When did you leave the Nassau Trust Company?

A In July, 1974.

Q Will you tell us whether or not you recall the conversation between yourself and Mr. Dowd while you were at the Nassau Trust Company, with respect to a

conversation he had with Mr. Clifford?

A Well, at one point, I was entering Mr. Dowd's office and he was talking on the telephone, and when he finished the telephone conversation, he told me had had been talking to P. J., whom I understood to be Mr. Clifford, because that's what Mr. Dowd called him.

He said Mr. Clifford indicated he was concerned about investigation of the bank's political contributions and Mr. Dowd said, "I hope those old records have been destroyed and Mr. Clifford said they have been taken care of."

Q Can you tell us approximately, to the best of your recollection, when this conversation took place?

A Some months before I left, I couldn't pinpoint exactly when that took place. I think it took place either late '73 or early '74.

MR. KATZBERG: I have nothing further in this connection, your Honor.

MR. PATTISON: We would ask that the Court allow the witness to say just that.

THE COURT: It seems to me it is admissible. There are no objections.

MR. NAFTALIS: Your Honor, may the witness be excused during this argument?

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THE COURT: Yes.

(Witness complies.)

MR. NAFTALIS: If your Honor please, I gave you a memorandum regarding the subject matter.

Apparently this witness will testify --

THE COURT: Not apparently, he already has testified and I know what his testimony is.

There is nothing apparent about it. I need not guess or surmise.

MR. NAFTALIS: He will testify to a conversation with Mr. Dowd after the investigations in this matter began and which Mr. Dowd relates to him what he said about a conversation Mr. Dowd presumably had with Mr. Clifford.

The indictment in this case charges a violation of substantive statute Section 610, which makes it a crime to make political contributions.

The conspiracy charges a conspiracy to violate Section 610, the political contribution statute, and not a conspiracy to violate any other statute of the United States.

If your Honor please, you have apparently characterized this case as simple. The issue is whether people made contributions, the bank made illegal political contributions or it didn't.

There is no alleged conspiracy to violate any of the sections of the Federal Criminal Code, which proscribe obstruction of justice or the like.

Under Rule 801 of the Federal Rules of Criminal Procedure, any hearsay declaration has to be during and in furtherance of the conspiracy.

The object of this conspiracy was to make political contributions and Mr. Katzberg said the motive of that conspiracy was to gain municipal accounts.

Once the investigation started, the evidence has shown, and I think it is clear, the contributions stopped.

Every witness who took the stand here, their FBI interview show once the investigation started and the Newsday articles broke in the beginning of '74, people no longer contributed and the conspiracy ended.

The law is clear, once the objects of the conspiracy -- the purposes have been accomplished or failed, it is over.

In addition, the statement, for it to be admissible, has to be in furtherance of the conspiracy. A statement by Mr. Dowd to Mr. Casey, who is out of the conspiracy, who left the bank, has nothing

A 706

to do with furthering the object of the conspiracy, which is to make political contributions.

What you have here is a statement which the Government would like to offer to create a lot of unfair and unwarranted implications that show this simple case, which your Honor has characterized it as such, and in which case they have a substantial amount of evidence of political contributions, they want to change this to a concealment, obstruction of justice, and it is not charged in the indictment and not warranted by the facts.

If they can put in this kind of evidence, I know what he will argue to the Jury, the defendants may as well go home now. That would be the equivalent of a slow plea of guilty.

We want to try this on political contributions, not on smokescreens. At best, this statement is an admission by Mr. Dowd not properly received here in a joint trial. It ought not be received in a joint trial and it id doubtful if it would be received in a single trial.

They certainly don'thave the admissibility of this hearsay against Mr. Clifford and Mr. Powell.

I direct your attention to Rule 403, which we cited in there where the prejudical value

A 707

outweighs its probative force.

We are dealing with highly prejudicial matters with limited probative force, if any.

I would think it would have a devastating effect on the defendants to get a fair trial.

The Government has been putting in all kinds of evidence relating to contributions --

THE COURT: In any event, all prejudicial matter must not be excluded by a Court. It is a question whether that prejudical matter is so outweighed by the probative value as to be completely unfair to have it go before the Jury.

The prejudice of this matter at most might be equally probative and I do not see it so unfair that its value would have no weight.

MR. NAFTALIS: You take a case here --

THE COURT: I understand the case.

MR. NAFTALIS: You are going to be making appeals into oranges. I know what he will -- Mr. Katzberg -- what he will argue to the Jury.

THE COURT: I don't know what anybody will argue to the Jury, but it must be legal inferences that may be brought.

I am sure Mr. Katzberg and yourself and the balance of you know you are not going to get away

7 with saying things not within the realm of the evidence or make improper statements or try to be completely elusive.

I want to hear what the Government has to say.

MR. COHN: On this point, with respect to Dowd, I recognize you have told us this as a matter purely discretionary, and you are going to be guided by rules of fairness.

Consider the fact that Dave Dowd resigned from the bank in September of '72, terminated his employment, now working for a competing bank.

As far as Dowd is concerned, his participation of the conspiracy terminated. He stands trial on an indictment charging him with 610 and 656.

The Government comes in and says: We'd like you to permit evidence to come in against Dave Dowd as involving a brand new conspiracy, objection of justice.

We are not prepared to meet this.

THE COURT: I don't think that is their argument at all.

Their argument is they would agree to argue that a brand new conspiracy was to take place, it

wouldn't be within bounds to submit it to the Court now.

They are saying the concealment was really and act between the two parties to further a conspiracy by way of concealment.

MR. COHN: The conversation was to the effect that they were concerned about an investigation at that time and they were concerned about the investigation into political contributions made in the context of that investigation.

I know you want Dave Dowd to get a fair trial.

THE COURT: I want everybody to get a fair trial including the Government.

MR. COHN: Would you consider a jury sitting and listening to that could forget every other bit of evidence.

I think this is so prejudicial that it goes beyond the bounds you have indicated.

THE COURT: I might have accepted your argument if there were only two witnesses in the case but here we have 14 witnesses.

They have testified the manner in which the contributions were made and salaries given. It isn't a question now of saying they will forget the

A 710

two witnesses.

There may be 14 more who say the same thing. The question of impropriety and the weight it would have, just doesn't seem to be that tremendously overpowering to cause a conviction.

MR. COHN: If all of --

THE COURT: Standing alone, he might have a good argument. I don't see the argument at all.

MR. NAFTALIS: If this matter were not so prejudicial, why have they pushed this so hard to bring down the chief assistant U. S. attorney to argue this matter.

THE COURT: That's not fair.

Mr. Korman has argued every question befor the Court involving constitutional problems and even the venue involved in the matter.

I don't think that is a fair statement to make. You can bring in somebody to argue before me. Fortunately I remember all this.

MR. NAFTALIS: We cite to you Supreme Court cases.

THE COURT: Yes, I know them all well.

MR. NAFTALIS: You couldn't extend the life of the conspiracy. This is what is happening here.

The only case they cited, Colisorro. I am

10 familiar with that case. That was not a case involving the violation of the election law or substantive statute like that.

It involved a continuing ongoing scheme to file false information with the Security and Exchange Commission to commit perjury.

Everyone went down to lie to the SEC and present false documents and all sorts of things like that involving the ownership.

That is not a case which is applicable here, where the crime here is: Did they make illegal political contributions or didn't they?

Sure the Government can bring in and argue to their hearts' content but this happened afterwards.

MR. NAFTALIS: That's why we call your attention to Krulitsch, Grunewald and Wongsun, all of which are leading Supreme Court cases cited with approval specifically in the Vessey notes on this point about matters having to be in furtherance of the conspiracy and during it.

801 states: "A statement is an oral or written assertion or non-verbal conduct of a person, if it is intended by him as an assertion. Hearsay is a statement other than one made by the

A 712

declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

This statement made here is after the investigation started, after the supposed political scheme has failed, after the contributors stopped contributing.

It is all in the FBI reports.

THE COURT: Why should it go to concealment?

MR. NAFTALIS: It would only go to one person.

THE COURT: We are talking about two people. The tele;hone conversation of two people, even pure hearsay, is admissible.

MR. NAFTALIS: Bruton says post-criminal or post-conspiratorial statement made by one defendant may not be received in evidence in a joint trial.

THE COURT: I don't see that at all.

MR. RYAN: Frank Powell is no part of this.

THE COURT: I had instructed the Jury as to that.

MR. KORMAN: This is not a 610 case.

Mr. Naftalis forgets the last two counts.

Paragraph 5 of Count One of the introduction

12 says:

A 713

"In or about December, 1967, Frank B. Powell, the defendant, told Jack Fretz, a bank officer, that he had been selected to make political contributions of $100 a month on behalf of the bank; that he would be reimbursed for these contributions by a $1,700 salary increase which would cover the cost to Fretz of the contributions, including taxes on the said increase."

The whole purpose of this, for having the bank officers make the payments was to have the bank's true role disguised and to hide the fact it was truly the bank making the political contributions.

The only reason was that if they discovered the bank was making the contributions, that was the end of it.

The statements were made during the conspiracy. The conspiracy was continuing and made during the course of the time period in which the indictment alleges the conspiracy took place.

Under these circumstances, we don't see any serious problem under Bruton.

MR. NAFTALIS: The Grunewald and Krulwich case recognizes every conspiracy has an element

A 714

of cons;iracy.

This is a concealment in connection with an investigation and that is what these cases deal with. They have attempted to offer this conversation as a statement in furtherance of the conspiracy.

Under that theory, which your Honor saw through the weakness of --

THE COURT: I said the testimony will not bind Mr. Powell. I am not talking about inferences that the Jury can draw. That is for the Jury to consider.

The Jury can consider matters they haven't heard so long as it is an inference they can draw from the evidence or lack of evidence.

MR. NAFTALIS: If your Honor please, I'd like to put this on the record because I feel very strongly about this point.

THE COURT: You have said it. I told you I would give you 10 minutes for this argument.

I have listened attentively. I have responded to your statements why I believe it is admissible. I don't think there is anything more to be said.

MR. NAFTALIS: We'd like to put an application

14 on the record for a mistrial, regarding this.

On behalf of all four defendants in this case, we move for a withdrawal of a juror and a declaration of a mistrial.

We think that receipt in evidence of this conversation and anything else along these lines in this post-conspiratorial period will deprive these defendants of a fair trial and puts into the record the most highly inflammatory and prejudicial matter, and nas the effect, and I say this with the greatest respect to you, of changing what I consider to be an arid, technically dry case into something the hope to make as some sort of a coverup case, and inflame the Jury into some sort of a Watergate case.

What you have done by admitting this evidence, and I haven't said these words before in this trial -- what you have done here is to deprive these defendants of a fair trial, and I repeat it, by the admission of this evidence, it is a slow plea of guilty for these defendants.

MR. KORMAN: If you want a conditional plea of guilty, I would be happy to have you preserve the issue for appeal.

MR. NAFTALIS: Let me finish.

A 716

15

MR. KORMAN: You are being carried away.

MR. NAFTALIS: Let me finish.

I want to make the record in this case because the Government counsel have been very zealous to get in evidence, and they told us they don't think there would be an appeal in this case, and maybe that's why they are trying to cut a few corners.

THE COURT: I don't want to know what counsel tell each other as lawyers in the hallway.

You have the right to discuss it outside. You are not enemies.

MR. NAFTALIS: Would you let us make a record?

THE COURT: If one lawyer can't say something to another lawyer in the hallway, and you come in and tell the Judge: There is something wrong with that; I am not concerned with your statements in the hallway as lawyers.

You have a profession and you guide yourself accordingly.

MR. NAFTALIS: May I be permitted to make a record?

THE COURT: Yes.

MR. NAFTALIS: If your Honor please, I say here the admission of this evidence concerning these

16 defendants constitutes nothing more than a slow --

THE COURT: You have said that.

MR. NAFTALIS: I haven't finished.

May I make a record on behalf of my client?

THE COURT: Repeating it doesn't make it any stronger.

MR. NAFTALIS: I submit a reversible error has been committed here and I don't want this U. S. attorney's office who claims waiver at the slightest drop of a hat, to claim the seventeenth floor --

MR. KORMAN: He hasn't waived the issue.

MR. RYAN: On behalf of the defendant Powell, I renew my motion for a severance.

MR. NAFTALIS: In behalf of the defendants, I ask our memorandum be marked which indicates Mr. Casey's testimony in the Grand Jury which varies in a large measure to what he's testifying now.

MR. KORMAN: I'd like to say one more thing, your Honor, in light of Mr. Naftalis' statement in what I said to him in terms of an appeal.

I would never make an argument to your Honor that I didn't think it was valuable simply because I didn't think the issue would not come up on appeal.

17 THE COURT: In any event, the Court has heard both motions. The motion that the statements made by the witness, and the Court finds they are admissible and have probative value, and secondly, the Court denies the motion for mistrial and the severance.

(Jury enters the Courtroom.)

(Witness Casey resumes the stand.)

DIRECT EXAMINATION

BY MR. KATZBERG (Cont'd):

Q Before the recess, I asked you what Mr. Dowd's role in the club was in 1971.

Do you remember that?

A Yes.

MR. COHN: We have been through that.

MR. KATZBERG: Just for continuity.

THE COURT: We don't need continuity.

Q Tell us what Mr. Clifford's role was to your knowledge in 1971, with respect to the club.

A Essentially, the same as Mr. Dowd's. He was a contributor not being reimbursed for the contributions as Mr. Dows was.

As a member of senior management, he was turned to for approval on a larger request and at times he passed on requests he received and had approved and

the funds were to be disbursed.

Q Did that role continue in 1972, do you know?

A Yes.

Q And in 1973 to a point when you left the bank?

A Yes.

Q You told us earlier that Mr. Clifford, on occasion, would approve new members of the club; is that correct?

A Yes.

Q Do you know an individual known as Dennis O'Dougherty?

A Yes.

Q Did you ever have any conversation with Mr. Clifford with respect to Mr. O'Dougherty's membership of the club?

A Yes.

Q Approximately when?

A Approximately the late summer of 1972.

Q What was Mr. O'Dougherty's title at the bank?

A Vice-president and worked in the municipal development.

Q Where did you have this conversation?

A In Mr. Clifford's office in Melville.

Q Would you tell the ladies and gentlemen what that conversation was?

A Mr. O'Dougherty was active in the Islip Republican organization and desired to run for New York State Assembly and the bank had a policy that, if any officer or any employee wished to participate in political or public life, then they must obtain approval of the bank, consequently I spoke to Mr. Clifford about Mr. O'Dougherty running for the Assembly.

Mr. O'Dougherty was already a member of the Islip Planning Board and I told Mr. Clifford if Mr. O'Dougherty obtained the nomination and was successful in the election, he would resign as a planning board member, he would agree not to serve on any committee of the New York State Assembly having to do with banks, and further, he had become a participant in the political contribution system.

Q Can you continue with the conversation?

A After I related this, I asked Mr. Clifford topresent this to the board and wrote a memorandum to Mr. Clifford asking him to present it and I outlined several of these items and did not include the item that Mr. O'Dougherty would not become a member of the political contribution.

Q Tell us about that part of the conversation.

A It was just part of the recital of items and Mr. Clifford just listened and said: Okay; that he would present it to the Board of Directors.

Q Did you propose Mr. O'Dougherty be a member of the club?

A Yes.

Q What did Mr. clifford say to that?

A This was part of the same conversation. He just listened and responded overall to all of that indicating that he would take up the matter with the board.

Q Any discussion about reimbursement?

A Yes. I indicated that since Mr. O'Dougherty was now being paid a certain salary as vice-president when and if he were successful in the election for assemblyman, because he would get an additional salary as an assemblyman, he would not need to be reimbursed.

Q What did Mr. Clifford say with respect to that?

A Just [illegible]ed and was taking all of this under advisement.

Q Did you know Mr. Winston Hart?

A Yes, he worked for the bank.

Q Did you ever have a conversation about

Mr. Hart with Mr. Clifford?

A Yes.

Q When?

A I had a number of conversations but particularly at salary review time at the end of the year in 1970, and also 1971, I discussed those officers who were in my department in terms of salary review.

Q What was that conversation?

A I had proposed a salary increase for Mr. Hart and Mr. Clifford questioned whether or not his performance warranted any further increase and felt he was adequately compensation, and I reminded him that part of the compensation was for political contributions.

(Continued on next page.)

Q What did Mr. Clifford say to that, if anything?

A Nothing.

Q Do you know an individual by the name of Harry Melsha?

A Yes.

Q Do you ever recall discussing Mr. Melsha in the same context with Mr. Clifford?

A Yes.

Q Approximately when was that?

A In 1972, Mr. Clifford was critical of Mr. Melsha --

MR. RYAN: Can we have the month or time?

Q Approximately when?

A In the late fall, approximately November.

Q Can you give us the conversation, please?

A I can only give you the substance of it.

Q Please do.

A Which was Mr. Clifford was critical of Mr. Melsha's performance and felt that --

MR. NAFTALIS: I move to strike he was critical

THE COURT: Yes.

MR. NAFTALIS: Did your Honor strike it?

THE COURT: Yes.

A (continuing) I proposed a salary increase for

Mr. Walsha and Mr. Clifford felt he should not receive an increase and again I reminded him part of his compensation was for the political contribution.

Q What if any response did Mr. Clifford have?

A I don't recall any response by Mr. Clifford.

Q You told us earlier in your testimony -- withdrawn.

Do you know an individual by the name of Roger Lew?

A Yes.

Q Do you recall having a conversation with Mr. Clifford with respect to Mr. Lew in the club?

A Yes.

Q Approximately when was that?

A Approximately in the spring of 1972.

Q Are you certain of that date, sir?

A No, I am not.

Q Do you recall having a conversation with Mr. Clifford specifically about Mr. Lew?

A Yes. I can recall the conversation.

Q Where did it take place?

A It took place at a dinner in New York City.

Q Was anyone else privy to that conversation other than yourself and Mr. Clifford?

A There were a number of people at the table and as is typical at dinners individual conversations are going on. It wasn't a lengthy conversation. But I don't think anybody took notice.

Q Can you give us the conversation?

A Mr. Clifford was talking about the fact that certain individuals received a different benefit from the salary increase they received for the political contributions and he stated Roger Lew as an example saying Roger had told him he had no tax liability because of his heavy investment in tax shelters and consequently the $2,000 salary increase he received was substantially more beneficial to him than somebody else who had a tax liability.

Q What if anything did you say?

A I said it's true but we can't look into the individual tax consequences of every participant.

Q Do you remember any response to that?

A No.

Q Are you familiar with an organization called the Governors Club?

A Yes.

Q Would you tell us what the Governors Club is?

A I can tell you what it was. I am not sure what it is today or even if it still exists. It was a club

formed by the New York State Republican Committee. I think they took its name from former Governor Rockefeller's participation and giving a reception to the members of this club at his home in Pocantico --

Q Can you spell that?

A P-O-C-A-N-T-I-C-O Hills in Westchester.

Q Go ahead.

A Not having been there I'm not sure of the spelling.

The club consists of those who contributed $500 per annum to the New York State Republican Committee.

Q Mr. Casey, to your knowledge, were any employees --

THE COURT: So that the jury knows, there is nothing illegal about having a Governors' Club.

MR. KATZBERG: I will stipulate to that.

Q Mr. Casey, to your knowledge, were any officers of the Security National Bank members of the Governors Club?

A Yes.

Q Do you recall who some of them might have been to your recollection?

A Mr. Clifford, Mr. Powell, and Mr. Hart were members.

Q To your knowledge, who paid the $500 for their membership?

A The political contribution system. That membership was later expanded I believe. Although I am not really sure, I think it was expanded while I was there to include a couple of additional people.

Q To your knowledge, did Mr. Clifford play any role with respect to those people in the Governors Club?

MR. NAFTALIS: Objection. He can testify he had a conversation about it.

THE COURT: Yes.

A I did have a conversation regarding Mr. Hart because at one point Mr. Clifford questioned whether or not he should continue as a member and I urged that he be continued as a member because of his role in the municipal development department and I felt it was important he continue to participate.

Q Did Mr. Clifford agree with you?

A He reluctantly agreed.

MR. NAFTALIS: I object and move to strike out "reluctantly."

THE COURT: Yes.

Q He agreed?

A Yes.

Q You told us that Mr. Clifford -- withdrawn. Earlier in your testimony you told us that

Mr. Clifford would approve specific contributions, is that correct? Do you remember saying that?

A Yes.

Q Can you give us an example of that?

A One that occurs to me, he called me on the telephone and told me he had met Judge Bernie Meyers, a Nassau Supreme Court Judge, who was a candidate for the New York State Court of Appeals, at a cocktail party and promised him some support.

And he told me to raise some money and to meet with Judge Meyers' campaign manager and give him the support Mr. Clifford had promised.

Q Was there any dollar figure mentioned?

A Yes.

Q How much?

A $500.

Q As a result of that conversation, what if anything did you do?

A I called Judge Meyers' campaign manager, Harold Ickes, Jr., the son of the former Secretary of the Interior.

Q Go ahead.

A And made a date to visit him in New York. I did. I went into their headquarters in New York. I had lunch with Mr. Ickes at Schraffts Restaurant at about 43rd

Street and I gave him the check totalling $500.

Q Where did you get the check from?

A I believe from Mr. Chadwick. I believe he called the five individuals -- not five, the individuals who had been contributing the checks.

Q You picked them up from Chadwick?

A To the best of my recollection, yes.

Q Where was Chadwick located when you picked up the checks?

A This would have been --

Q Let me show you the checks and see if they help fix your recollection where Mr. Chadwick was.

A I believe Mr. Chadwick at that time was physically located in the main office in Melville on the same floor in an adjoining area to where I was.

Q You picked up the checks from Mr. Chadwick?

A To the best of my recollection, yes.

For the record, I'm showing you Exhibit 82, 82A and 82B, 82C for identification.

I want you to look at those four items, sir, and tell us whether or not you recognize them? Front and back.

A Yes, these are the checks that I delivered to Harold Ickes, Jr.

Q To whom were the checks drawn?

A Committee to elect Bernard Meyers.

Q What is the total amount of money represented by those checks?

A Four checks representing $500.

Q Can you look at the back of these checks and tell us what endorsement, if any, appears on the back of those checks?

A They are endorsed to the Committee to Elect Judge Meyers.

Q Is there an address?

A Yes, Suite LL82, 114 Old Country Road, Mineola.

MR. KATZBERG: At this time the Government offers into evidence Exhibits 82, 82A, 82B and 82C.

MR. BANNIGAN: I have no objection subject to my motion on behalf of the bank.

MR. COHN: May I have a voir dire?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. COHN:

Q Mr. Casey --

MR. NAFTALIS: I take it we all have no objection subject to the motion made.

THE COURT: Right.

Q Take a look at this check, Mr. Casey, the one marked 82A.

Do you know the name on the check?

A The payee?

Q Who made the check?

A The maker, I don't recognize the signature.

Q There is a printed name there.

A Robert Doud.

Q Is that the same as David Dowd?

A No, different individual and the last name is spelled differently.

MR. KATZBERG: Can we have the spelling for the record?

MR. COHN: Robert Doud, D-O-U-D, and the witness says it is a different gentleman than the defendant on trial.

MR. KATZBERG: I stipulate to that.

MR. COHN: Thank you.

THE CLERK: Government's Exhibits 82, 82A through C inclusive received in evidence.

(So marked.)

DIRECT EXAMINATION

BY MR. KATZBERG: (continuing)

Q Did you report back to Mr. Clifford that the checks had been delivered?

A Yes, when I was at the headquarters I briefly met Judge Meyers and just said hello to him and I believe I told him I was there as a result of his conversation with Mr. Clifford and that I told Mr. Clifford subsequently that I had met with Mr. Ickes and delivered the checks.

Q Mr. Casey, I want to direct your attention to the early part of the year 1971, did there come a time when you learned that an anonymous letter had been written to the regional administrator of the bank?

A Yes.

Q Approximately when did you first learn about this anonymous letter?

A Did you say 1971?

Q Is that your recollection? When did you remember first hearing about it?

MR. NAFTALIS: The witness should answer --

MR. RYAN: I would rather have the witness try to recall.

THE COURT: Yes.

A I'm not sure of the month. I learned about it.

And I know we were still in Huntington. We had not moved to Melville which took place in late 1971.

The headquarters was moved to Melville so it had to be prior to that time. My recollection is it was late winter or early spring 1971.

Q Around that time you heard about the anonymous letter, is that correct?

A Yes.

Q Who was the first person that told you about this?

A Mr. David Dowd.

Q Was that in person or over the phone?

A I believe it was in person.

Q Where did the conversation take place?

A In his office in Huntington.

Q Was anybody else present?

A I don't think so. I don't recall anyone being present.

Q Could you tell us what was said.

A He told me an anonymous letter had been received by the regional administration of National Banks complaining the writer of the letter was an employee of a bank and was required to make political contributions and as I recall specifically complaining about some of the checks

he had written and particularly to William Shea.

Q Did Mr. Dowd say anything at this time?

A Yes, he told me the matter was going to be investigated by the regional administrators office and they expected a representative of that office to come out to the bank.

Q Did there come a time when you spoke to anyone else about this matter?

A Yes. Subsequently I spoke to Mr. Powell about it who told me that he had seen the letter.

(Continued on next page)

S fols.